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Delegations will find attached a proposal from the Commission submitted under a covering letter from Mr Jordi AYET PUIGARNAU, Director, to Mr Uwe CORSEPIUS, Secretary-General of the Council of the European Union.

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Encl.: COM(2013) 410 final



Strasbourg, 11.6.2013  
COM(2013) 410 final

2013/0186 (COD)

Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**on the implementation of the Single European Sky**

**(recast)**

(Text with EEA relevance)

{SWD(2013) 206 final}

{SWD(2013) 207 final}

## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE PROPOSAL

The Single European Sky (SES) initiative aims to improve the overall efficiency of the way in which European airspace is organised and managed through a reform of the industry providing air navigation services (ANS). Its development has involved two comprehensive legislative packages – SES I and SES II composed of four regulations<sup>1</sup> – and over 20 Commission implementing rules and decisions<sup>2</sup>. The framework of the four SES regulations is intertwined with the development of the European Aviation Safety legislation<sup>3</sup>, the latter comprising a number of tasks entrusted to the European Aviation Safety Agency (EASA)<sup>4</sup> and the launch of a comprehensive project to modernise equipment and systems for air navigation services under the SESAR title<sup>5</sup>. Existing rules touch upon five interrelated pillars addressing performance, safety, technology, the human factor and airports.

The experience gained with SES I since 2004 and SES II since 2009 has shown that the principles and direction of the SES are valid and warrant a continuation of their implementation. However the initiative is experiencing significant delays in its implementation, notably in the achievement of the performance goals and the deployment of its basic elements (such as functional airspace blocks (FABs) or National Supervisory Authorities (NSAs)).

In 2009, when adopting the SES II package, the legislator decided that SES II would be done in two stages and invited the Commission to come back to do an alignment of SES and EASA regulations after the initial set of EASA implementing measures and audit experiences concerning ANS was in place<sup>6</sup>. A recast of the legislative package was therefore already foreseen, primarily aiming at simplifying and clarifying the border line between EASA and SES legal frameworks.

The process of recast also gives the opportunity to assess the effectiveness of the existing legal provisions in the light of the lack of timely implementation of the SES initiative. This process of revision of the SES legal framework, known under the abbreviation of SES 2+, is intended to accelerate the implementation of the reform of air navigation services without departing from its original objectives and principles. It is also part of the Single Market Act

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<sup>1</sup> The Framework Regulation ((EC) No 549/2004) - laying down the framework for the creation of the Single European Sky; The Service Provision Regulation ((EC) No 550/2004) - on the provision of air navigation services in the Single European Sky; The Airspace Regulation ((EC) No 551/2004) - on the organisation and use of airspace in the Single European Sky; The Interoperability Regulation ((EC) No 552/2004) - on the interoperability of the European Air Traffic Management network.

<sup>2</sup> An overview of SES legislation can be found in Annex III of the SES2+ Impact Assessment document.

<sup>3</sup> Regulation (EC) No 216/2008, as amended by Regulation (EC) No 1108/2009.

<sup>4</sup> Whereas the Commission Roadmap on implementation of the Joint Statement of the European Parliament, the Council of the EU and the European Commission on decentralised agencies, of July 2012, requires the standardisation of the names of all EU Agencies to conform to the same format, for reasons of clarity, this explanatory memorandum uses the currently existing name of the European Aviation Safety Agency (EASA) throughout the text. The text of the legislative proposal itself has been adapted in accordance with the new Joint Statement and Roadmap to use the standardised name "European Union Agency for Aviation (EAA)"

<sup>5</sup> Council Regulation (EC) No 219/2007; SESAR (the Single European Sky ATM Research Programme) is a technical pillar of SES - an ATM improvement programme involving all aviation.

<sup>6</sup> Regulation (EC) No 216/2008, (as amended by Regulation (EC) No 1108/2009) Art 65a.

II<sup>7</sup> initiative and aims hence to improve the general competitiveness and growth of the EU economy and not just that of the air traffic management system.

The purpose of the SES 2+ package is to introduce improvements in oversight of rules, the performance scheme, the customer focus of the service providers and in overall performance.

In addition, the SES 2+ package will simplify the legislation by eliminating certain overlaps in the existing framework. Concerns have been raised about several overlapping areas existing in the SES framework and there is also a need to clarify the roles of the various actors at EU-level. This alignment between the four SES Regulations and the EASA Basic Regulation<sup>8</sup>, is a purely technical adaptation measure already required by the legislation. Due to the extent of overlap between the Regulations, a recast of the remaining parts of the four SES Regulations into one is a logical consequence of that adaptation.

### **Problems addressed**

The first problem area addressed in SES2+ is **the insufficient efficiency of Air Navigation ANS** provision remains relatively inefficient in terms of cost- and flight efficiency as well as the capacity offered. This is highlighted by a comparison with the United States, which covers similar sized airspace. In the US, the en-route airspace is controlled by a single service provider as opposed to 38 en-route service providers in Europe. The US service provider controls almost 70% more flights with 38% less staff. The main root causes for this difference in productivity in Europe are the shortcomings in setting up and enforcing the performance scheme, ineffective supervisory authorities and the disproportionately high amount of support staff in the service providers.

The second key problem addressed is a **fragmented ATM system**. The European ATM system consists of 27 national authorities overseeing in total over a hundred Air Navigation Service Providers (ANSPs), with the associated variance in systems, rules and procedures. There is a large amount of additional costs caused by the fact that Europe has a large number of service providers, each procuring their own systems, mostly training their own staff, creating their own operating procedures and being limited territorially to providing services in a small airspace. To overcome fragmentation, the SES has introduced the ideas of cross-border Functional Air Blocks (FABs) and the centralised Network Manager to run certain network level services. However, FABs are not yet performance oriented and the Network Manager remains too weak.

### **General objective:**

To improve the competitiveness of the European air transport system vis-à-vis other comparable regions and in particular to develop further the Single European Sky initiative.

### **Specific objectives:**

- To improve the performance of air traffic services in terms of efficiency.
- To improve the utilisation of air traffic management capacity.

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<sup>7</sup> COM(2012) 573 final.

<sup>8</sup> Regulation (EC) No 216/2008.

## **Operational objectives:**

- To ensure that the provision of Air Navigation Services is transparent, based on market principles and customer value.
- To strengthen the role of the National Supervisory Authorities.
- To strengthen the process of setting up targets and enforcing the performance scheme (including the reinforcement of the Performance Review Body/Performance Review Unit (PRB/PRU).
- To undertake a strategic redirection of Functional Airspace Blocks.
- To strengthen the governance and operational scope of the Network Manager.

## **2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS**

A three-month public consultation was performed between September and December 2012 on the DG MOVE website. In addition two high-level events – a conference in Limassol and a hearing in Brussels – have been organised and numerous bilateral meetings with all affected stakeholders have taken place to support the preparation of this initiative.

An impact assessment (IA) has been prepared by DG MOVE to support legislative proposals on improving efficiency, safety and competitiveness of the Single European Sky. The package proposes revising the four SES Regulations ((EC) Nos 549-552/2004, as amended by Regulation (EC) No 1070/2009) and the EASA Basic Regulation (Regulation (EC) No 216/2008, as amended by Regulation (EC) No 1108/2009)<sup>9</sup>. This initiative concerns agenda planning number (EU) No 2014/MOVE/001. The impact assessment roadmap has also been published on the website of the Commission<sup>10</sup>.

## **3. LEGAL ELEMENTS OF THE PROPOSAL**

### **3.1. Recast (throughout the Regulation)**

The four SES Regulations have been merged into a single regulation, which has necessitated a number of changes throughout them. The new rule is structured in five chapters based on the actors concerned:

- Chapter I: General provisions
- Chapter II: National authorities
- Chapter III: Service provision
- Chapter IV: Airspace
- Chapter V: Final provisions

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<sup>9</sup> As mentioned above, the amendments to the EASA Basic Regulation will be of a technical nature and therefore will not be analysed in the IA context.

<sup>10</sup> [http://ec.europa.eu/governance/impact/planned\\_ia/roadmaps\\_2013\\_en.htm#MOVE](http://ec.europa.eu/governance/impact/planned_ia/roadmaps_2013_en.htm#MOVE).

In addition, some of the contents which overlapped with the existing Regulation (EC) No 216/2008 have been removed from the SES Regulations and certain small details from these removed sections have been reproduced in Regulation (EC) No 216/2008, in order to underline the continuity of approach. Most provisions have been removed from Regulation (EC) No 552/2004, which is now deleted in its entirety, except for certain details related to Annex I on notified bodies, which have been merged with the annex on qualified entities, as well as some general descriptive paragraphs in Annex II, which are reproduced in Annex Vb of Regulation (EC) No 216/2008 to stress the need for continuing existing policies.

In line with the view that the Commission should focus on economic regulation and in particular on the performance scheme and SESAR, whereas EASA(now EAA, under the agreement on standardisation of Agencies) supports the process through co-ordinating all technical rule drafting, a new Article 28 has been added to describe the manner in which the consistency between SESAR policies and new technical rules can be ensured.

Finally, the new rules on implementing and delegated acts stemming from the Lisbon Treaty have been included throughout the Regulation.

### **3.2. National authorities (Articles 3, 4 and 5 and Article 2, definition 36)**

One of the major needs for action identified in the impact assessment has been the need to strengthen the national authorities, both as regards their independence and their expertise and resources. For that purpose Article 3 describes the level of independence required from the authorities vis-à-vis the service providers they are intended to oversee. Due to the need in some Member States to carry out some administrative reorganisation, a transitional period is also foreseen until 2020. Furthermore more explicit requirements are set on the competences and independence of the staff hired, as well as strengthening the independent funding of the authorities through the route charges scheme Article 14.

To improve expertise amongst the authorities, a network of national authorities is foreseen in Article 5, including also the possibility of pooling experts so that States may benefit of experts coming from other Member States.

Finally, a definition of the term 'National Supervisory Authority' has been added, whereby it is clarified that for the purposes of this Regulation the competent authorities under Regulation (EC) No 216/2008 are considered to be National Supervisory Authorities, so that no second layer of administration is required.

### **3.3. Performance and charging schemes (Articles 11, 12, 13 and 14)**

The Article 11 on performance scheme has been amended to rationalise the process of target setting and to allow focusing of target setting more at the local level. This allows for more educated tailored setting of targets.

Small adjustments to support this have also been made to Articles 12 and 13 on charging and the text has also been updated so that the provision concerning funding of authority tasks covers also the extension of EASA under Regulation (EC) No 1108/2009 to perform some of those tasks.

### **3.4. Functional Airspace Blocks (Article 16)**

The article was amended already under Regulation (EC) No 1070/2009 to give the functional airspace blocks (FABs) more of a performance focus and this process is continued in this revision. The FABs should not be seen as static blocks of airspace, but as industry-led initiatives to seek improvements in overall service provision. For that to be possible, the industry needs to be given more flexibility to develop the FABs, even to devise different types of FABs, depending on where they expect to find the most synergies. Therefore the focus of the article is now more on flexible "industrial partnerships" and the measure of success will be the level of performance improvements achieved.

### **3.5. Support services (Articles 10 and Article 2, definition 37)**

Since analysis has shown that most improvement potential exists in the services that are provided to support the core air traffic services and since these services by their nature could also be provided under market conditions, the former Article 9 of Regulation (EC) No 550/2004 has been deleted and replaced with an article concerning the provision of support services under normal public procurement rules. The core air traffic services, which are considered to be natural monopolies, remain under the requirement to designate them, but support services should be allowed to develop freely, using the full potential of expertise also from other sectors. A safeguard clause has been included, based on the model of Article 4 of Regulation (EC) No 1008/2008 to ensure vital security and economic interests are not endangered. A transitional period is foreseen until 2020.

Finally, a definition of support services is included in Article 2 (37) to explain which services are targeted with this provision.

### **3.6. Network Management (Articles 17 and Article 2, definitions 7, 9 and 10)**

The Article 17 on network management has been updated in two ways. First, the previously inconsistent article has been reorganised to bring the listing of all of the services that the Network Manager provides into paragraph 2 and elements that were related to technical implementing rules on air traffic flow management – and hence not to the Network Manager itself – have been relocated in Annex Vb of Regulation (EC) No 216/2008, which already included the relevant provisions concerning flow management rules. In connection with this, a reference to the aeronautical information portal has been added to paragraph 2 as this service is already to some extent integrated in the Network Manager, but not expressly mentioned in the Regulation.

Secondly, the article has been revised to align it with the language used in Regulation (EC) No 1108/2009, naming the "functions" as "services" and treating the Network Manager consistently in the same manner as other service providers insofar as certification, oversight and safety requirements are concerned. The language of the relevant definitions has also been updated accordingly.

Finally, a provision has been included in Article 17 to cover the further development of the Network Manager in the direction of an industrial partnership by 2020.

### **3.7. Involvement of airspace users (Article 19)**

The need to introduce more customer focus on the air navigation service providers was identified as one area of improvement in the impact assessment. A new Article 19 has been

created to ensure the airspace users are consulted and also involved in the approval of investment plans.

#### **4. OPTIONAL ELEMENTS**

A shorter separate explanatory memorandum has been created to accompany the proposed amendments to the EASA Basic Regulation, i.e. Regulation (EC) No 216/2008.

The proposal has no impact on EU Budget, as all the functions addressed in it already exist today.



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↓ 549/2004 (adapted)

2013/0186 (COD)

Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

~~laying down the framework for the creation of~~  on the implementation of  the  
sSingle European sSky

(recast)

(Text with EEA relevance)

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↓ 549/2004 (adapted)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty  on the Functioning of the European Union  ~~establishing the European Community~~, and in particular Article ~~80(2)~~  100(2)  thereof,

Having regard to the proposal from the European Commission<sup>11</sup>,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the opinion of the European Economic and Social Committee<sup>12</sup>,

Having regard to the opinion of the Committee of the Regions<sup>13</sup>,

Acting in accordance with the ordinary legislative procedure,

Whereas:

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↓ new

(1) Regulation (EC) No 549/2004 of 10 March 2004 laying down the framework for the creation of the single European sky (the framework Regulation)<sup>14</sup>, Regulation (EC) No 550/2004 of 10 March 2004 on the provision of air navigation services in the single European sky (the service provision Regulation)<sup>15</sup>, Regulation (EC) No 551/2004 of 10 March 2004 on the organisation and use of the airspace in the

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<sup>11</sup> OJ C 103 E, 30.4.2002, p. 1.

<sup>12</sup> OJ C 241, 7.10.2002, p. 24.

<sup>13</sup> OJ C 278, 14.11.2002, p. 13.

<sup>14</sup> OJ L 96, 31.3.2004, p. 1.

<sup>15</sup> OJ L 96, 31.3.2004, p. 10.

single European sky (the airspace Regulation)<sup>16</sup> and Regulation (EC) No 552/2004 of 10 March 2004 on the interoperability of the European air traffic management network (the interoperability Regulation)<sup>17</sup> have been substantially amended. Since further amendments are to be made, they should be recast in the interests of clarity.

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↓ 549/2004 recital 1

- (2) Implementation of the common transport policy requires an efficient air transport system allowing safe and regular operation of air transport services, thus facilitating the free movement of goods, persons and services.
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↓ 549/2004 recital 2 (adapted)

~~At its Extraordinary Meeting in Lisbon on 23 and 24 March 2000, the European Council called on the Commission to put forward proposals on airspace management, air traffic control and air traffic flow management, based on the work of the High Level Group on the single European sky set up by the Commission. This Group, made up largely of the civil and military air navigation authorities in the Member States, submitted its report in November 2000.~~

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↓ 1070/2009 recital 2 (adapted)

- (3) The adoption by the European Parliament and the Council of the first package of the single European sky legislation, namely, Regulation (EC) No 549/2004 ~~of 10 March 2004 laying down the framework for the creation of the single European sky (the framework Regulation)~~, Regulation (EC) No 550/2004 ~~of 10 March 2004 on the provision of air navigation services in the single European sky (the service provision Regulation)~~, Regulation (EC) No 551/2004 ~~of 10 March 2004 on the organisation and use of the airspace in the single European sky (the airspace Regulation)~~, and Regulation (EC) No 552/2004 ~~of 10 March 2004 on the interoperability of the European air traffic management network (the interoperability Regulation)~~, laid down a firm legal basis for a seamless, interoperable and safe air traffic management (ATM) system.
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↓ new

The adoption of the second package, namely, Regulation (EC) No 1070/2009, further strengthened the Single European Sky initiative by introducing the performance scheme and the Network Manager concepts to further improve the performance of the European Air Traffic Management system

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<sup>16</sup> OJ L 96, 31.3.2004, p. 20.

<sup>17</sup> OJ L 96, 31.3.2004, p. 26.

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↓ 550/2004 recital 3 (adapted)

~~Regulation (EC) No 549/2004 of the European Parliament and of the Council of 10 March 2004 (the framework Regulation)<sup>18</sup> lays down the framework for the creation of the single European sky.~~

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↓ 551/2004 recital 4 (adapted)

~~Regulation (EC) No 549/2004 of the European Parliament and of the Council of 10 March 2004 (the framework Regulation)<sup>19</sup> lays down the framework for the creation of the single European sky.~~

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↓ 551/2004 (adapted)

(4) In Article 1 of the 1944 Chicago Convention on Civil Aviation, the Contracting States recognise that ‘every State has complete and exclusive sovereignty over the airspace above its territory’. It is within the framework of such sovereignty that the Member States of the ~~Community~~ ☒ Union ☒, subject to applicable international conventions, exercise the powers of a public authority when controlling air traffic.

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↓ 552/2004 recital 3 (adapted)

~~Regulation (EC) No 549/2004 of the European Parliament and of the Council of 10 March 2004 (the framework Regulation)<sup>20</sup> lays down the framework for the creation of the Single European Sky.~~

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↓ 1070/2009 recital 1

(5) Implementation of the common transport policy requires an efficient air transport system allowing the safe, regular and sustainable operation of air transport services, optimising capacity and facilitating the free movement of goods, persons and services.

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↓ 1070/2009 recital 37

(6) The simultaneous pursuit of the goals of augmentation of air traffic safety standards and improvement of the overall performance of ATM and ANS for general air traffic in Europe require that the human factor be taken into account. Therefore the Member States should consider the introduction of ‘just culture’ principles.

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↓ 549/2004 recital 6 (adapted)

(7) The Member States have adopted a general statement on military issues related to the Single European Sky<sup>21</sup>. According to this statement, Member States should, in

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<sup>18</sup> ~~See page 1 of this Official Journal.~~

<sup>19</sup> ~~See page 1 of this Official Journal.~~

<sup>20</sup> ~~See page 1 of this Official Journal.~~

<sup>21</sup> See page 9 of this Official Journal.

particular, enhance civil-military cooperation and, if and to the extent deemed necessary by all Member States concerned, facilitate cooperation between their armed forces in all matters of air traffic management.

↓ 549/2004 recital 3

~~Smooth operation of the air transport system requires a consistent, high level of safety in air navigation services allowing optimum use of Europe's airspace and a consistent, high level of safety in air travel, in keeping with the duty of general interest of air navigation services, including public service obligations. It should therefore be carried out to the highest standards of responsibility and competence.~~

↓ 549/2004 recital 4

~~The single European sky initiative should be developed in line with the obligations stemming from the membership of the Community Union and its Member States of Eurocontrol, and in line with the principles laid down by the 1944 Chicago Convention on International Civil Aviation.~~

↓ 549/2004 recital 5 (adapted)

- (8) Decisions relating to the content, scope or carrying out of military operations and training do not fall within the sphere of competence of the ~~Community~~ ☒ Union under Article 100(2) of the Treaty on the Functioning of the European Union ☒.

↓ 549/2004 recital 23 (adapted)

~~Arrangements for greater cooperation over the use of Gibraltar airport were agreed in London on 2 December 1987 by the Kingdom of Spain and the United Kingdom in a joint declaration by the Ministers of Foreign Affairs of the two countries. Such arrangements have yet to enter into operation.~~

↓ 550/2004 recital 1 (adapted)  
⇒ new

- (9) Member States have restructured, to varying degrees, their national air navigation service providers by increasing their level of autonomy and freedom to provide services. It is ~~increasingly~~ necessary to ensure that ⇒ a well-functioning common market exists for those services that can be provided under market conditions and ⇐ minimum public-interest requirements are satisfied ⇒ for those services that are considered natural monopolies under current technological conditions ⇐ ~~under this new environment.~~

↓ 550/2004 recital 4

~~In order to create the single European sky, measures should be adopted to ensure the safe and efficient provision of air navigation services consistent with the organisation and use of airspace as provided for in Regulation (EC) No 551/2004 of the European Parliament and of the Council of 10 March 2004 on the organisation and use of the~~

~~airspace in the single European sky (the airspace Regulation)<sup>22</sup>. The establishment of a harmonised organisation for the provision of such services is important in order to respond adequately to the demand of airspace users and to regulate air traffic safely and efficiently.~~

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↓ 551/2004 recital 1

~~The creation of the single European sky requires a harmonised approach for regulation of the organisation and the use of airspace.~~

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↓ 551/2004 recital 2 (adapted)

~~In the report of the High Level Group on the single European sky in November 2000 it is considered that airspace should be designed, regulated and strategically managed on a European basis.~~

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↓ 551/2004 recital 3 (adapted)

~~The Communication of the Commission on the creation of the single European sky of 30 November 2001 calls for structural reform to permit the creation of the single European sky by way of a progressively more integrated management of airspace and the development of new concepts and procedures of air traffic management.~~

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↓ 551/2004 recital 6

~~Airspace is a common resource for all categories of users that needs to be used flexibly by all of them, ensuring fairness and transparency whilst taking into account security and defence needs of Member States and their commitments within international organisations.~~

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↓ 551/2004 recital 7

~~Efficient airspace management is fundamental to increasing the capacity of the air traffic services system, to providing the optimum response to various user requirements and to achieving the most flexible use of airspace.~~

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↓ 552/2004 recital 1

~~In order to create the Single European Sky, measures should be adopted in relation to systems, constituents and associated procedures with the objective of ensuring the interoperability of the European air traffic management network (EATMN) consistent with the provision of air navigation services as provided for in Regulation (EC) No 550/2004 of the European Parliament and of the Council of 10 March 2004 on the provision of air navigation services in the Single European Sky (the service provision Regulation)<sup>22</sup> and the organisation and use of airspace as provided for in Regulation (EC) No 551/2004 of the European Parliament and of the Council of 10 March 2003~~

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<sup>22</sup> See page 20 of this Official Journal.

<sup>23</sup> See page 10 of this Official Journal.

on the organisation and use of the airspace in the Single European Sky (the Airspace Regulation)<sup>24</sup>.

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↓ 552/2004 recital 2 (adapted)

~~The report of the High Level Group on the Single European Sky has confirmed the need to establish technical regulation on the basis of the 'new approach' in accordance with the Council resolution of 7 May 1985 on a new approach to technical harmonisation and standards<sup>25</sup> where essential requirements, rules and standards are complementary and consistent.~~

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↓ 552/2004 recital 4 (adapted)

~~The report of the High Level Group has confirmed that even though progress has been achieved during the last few years towards seamless operation of the EATMN, the situation still remains unsatisfactory, with a low level of integration between national air traffic management systems and a slow pace in the introduction of new concepts of operation and technology necessary to deliver the additional required capacity.~~

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↓ 552/2004 recital 5

~~Enhancing the level of integration at Community level would result in better efficiency and lower costs for system procurement and maintenance and in improved operational coordination.~~

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↓ 552/2004 recital 6

~~The predominance of national technical specifications used in procurement has led to fragmentation of the systems market and does not facilitate industrial cooperation at Community level; as a result, industry is particularly affected since it needs to considerably adapt its products for each national market; these practices render development and implementation of new technology unnecessarily difficult and slow down the introduction of new operational concepts that are required to increase capacity.~~

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↓ 549/2004 recital 8)

~~For all these reasons, and with a view to extending the single European sky to include a larger number of European States, the Community should, while taking into account the developments occurring within Eurocontrol, lay down common objectives and an action programme to mobilise the efforts by the Community, the Member States and the various economic stakeholders in order to create a more integrated operating airspace: the single European sky.~~

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<sup>24</sup> See page 20 of this Official Journal.

<sup>25</sup> OJ C 136, 4.6.1985, p. 1.

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↓ 549/2004 recital 24

~~Since the objective of this Regulation, namely the creation of the single European sky, cannot be sufficiently achieved by the Member States, by reason of the transnational scale of the action, and can therefore be better achieved at Community Union level, while allowing for detailed implementing rules that take account of specific local conditions, the Community Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve this objective.~~

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↓ 549/2004 recital 9

~~Where Member States take action to ensure compliance with Community requirements, the authorities performing verifications of compliance should be sufficiently independent of air navigation service providers.~~

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↓ 549/2004 recital 10

~~Air navigation services, in particular air traffic services which are comparable to public authorities, require functional or structural separation and are organised according to very different legal forms in the various Member States.~~

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↓ 549/2004 recital 11

~~Where independent audits are required relating to providers of air navigation services, inspections by the official auditing authorities of the Member States where those services are provided by the administration, or by a public body subject to the supervision of the abovementioned authorities, should be recognised as independent audits, whether the audit reports drawn up are made public or not.~~

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↓ 1070/2009 recital 9

(10) To ensure the consistent and sound oversight of service provision across Europe, the national supervisory authorities should be guaranteed sufficient independence and resources. This independence should not prevent those authorities from exercising their tasks within an administrative framework.

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↓ 1070/2009 recital 10

(11) National supervisory authorities have a key role to play in the implementation of the ~~Single European Sky~~ and the Commission should therefore facilitate cooperation among them in order to enable the exchange of best practices and to develop a common approach, including through enhanced cooperation at regional level. This cooperation should take place on a regular basis.

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↓ 550/2004 recital 6

~~Member States are responsible for monitoring the safe and efficient provision of air navigation services and for the control of compliance by air navigation service providers with the common requirements established at Community level.~~

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↓ 550/2004 recital 7

~~Member States should be permitted to entrust to recognised organisations, which are technically experienced, the verification of compliance of air navigation service providers with the common requirements established at Community level.~~

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↓ 549/2004 recital 20

~~The sanctions provided for with respect to infringements of this Regulation and of the measures referred to in Article 3 should be effective, proportional and dissuasive, without reducing safety.~~

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↓ 549/2004 recital 17

~~The social partners should be informed and consulted in an appropriate way on all measures having significant social implications. The Sectoral Dialogue Committee set up under Commission Decision 1998/500/EC of 20 May 1998 on the establishment of Sectoral Dialogue Committees promoting the dialogue between the social partners at European level<sup>26</sup> should also be consulted.~~

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↓ 1070/2009 recital 11 (adapted)

(12) The social partners should be better informed and consulted on all measures having significant social implications. At ~~Community~~  Union  level, the Sectoral Dialogue Committee set up under Commission Decision 98/500/EC<sup>27</sup> should also be consulted.

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↓ 550/2004 recital 11

~~Conditions attached to certificates should be objectively justified and should be non-discriminatory, proportionate and transparent, and compatible with relevant international standards.~~

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↓ 550/2004 recital 2 (adapted)

~~The report of the High Level Group on the single European sky of November 2000 has confirmed the need for rules at Community level to distinguish between regulation and service provision and to introduce a system of certification aimed at preserving public~~

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<sup>26</sup> OJ L 225, 12.8.1998, p. 27.

<sup>27</sup> OJ L 225, 12.8.1998, p. 27.



~~interest requirements, most notably in terms of safety, and to improve charging mechanisms.~~

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↓ 550/2004 recital 10

~~Whilst guaranteeing the continuity of service provision, a common system should be established for certifying air navigation service providers, which constitutes a means for defining the rights and obligations of those providers and for regular monitoring of compliance with such requirements.~~

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↓ 550/2004 recital 12

~~The certificates should be mutually recognised by all Member States in order to allow air navigation service providers to provide services in a Member State other than the country in which they obtained their certificates, within the limits of the safety requirements.~~

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↓ 550/2004 recital 14

~~In the interest of facilitating the safe handling of air traffic across the boundaries of the Member States for the benefit of the airspace users and their passengers, the system of certification should provide for a framework to enable Member States to designate providers of air traffic services, regardless of where they have been certified.~~

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↓ 550/2004 recital 5

~~The provision of air traffic services, as envisaged by this Regulation, is connected with the exercise of the powers of a public authority, which are not of an economic nature justifying the application of the Treaty rules of competition.~~

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↓ 550/2004 recital 13

⇒ new

(13) The provision of communication, navigation and surveillance services, as well as ⇒ meteorological and ⇐ aeronautical information services, should be organised under market conditions whilst taking into account the special features of such services and maintaining a high level of safety.

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↓ 550/2004 recital 15

~~On the basis of their analysis of safety considerations, Member States should be able to designate one or more providers of meteorological services in respect of all or part of the airspace under their responsibility, without the need to organise a call for tenders.~~

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↓ 550/2004 recital 19

~~Charging conditions applying to airspace users should be fair and transparent.~~

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↓ 550/2004 recital 20

~~User charges should provide remuneration for the facilities and services provided by air navigation service providers and Member States. The level of user charges should be proportionate to the cost, taking into consideration the objectives of safety and economic efficiency.~~

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↓ 550/2004 recital 21

(14) There should be no discrimination between airspace users as to the provision of equivalent air navigation services.

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↓ 550/2004 recital 22

~~Air navigation service providers offer certain facilities and services directly related to the operation of aircraft, the costs of which they should be able to recover according to the 'user pays' principle, which is to say that airspace users should pay for the costs they generate at, or as close as possible to, the point of use.~~

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↓ 550/2004 recital 23

~~It is important to ensure the transparency of the costs to which such facilities or services give rise. Accordingly, any changes made to the system or level of charges should be explained to airspace users; such changes or investment proposed by air navigation service providers should be explained as part of an exchange of information between their management bodies and airspace users.~~

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↓ 550/2004 recital 24

~~There should be scope for modulating charges that contribute to maximising system-wide capacity. Financial incentives may be a useful way of accelerating the introduction of ground-based or airborne equipment that increases capacity, of rewarding high performance or of offsetting the inconvenience of choosing less desirable routings.~~

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↓ 550/2004 recital 25

~~In the context of those revenues raised to provide a reasonable return on assets, and in direct correlation with the savings made from efficiency improvements, the Commission should study the possibility of establishing a reserve aimed at reducing the impact of a sudden increase in charges to airspace users at times of reduced levels of traffic.~~

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↓ 550/2004 recital 26

~~The Commission should examine the feasibility of organising temporary financial aid for measures to increase the capacity of Europe's air traffic control system as a whole.~~

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↓ 1070/2009 recital 7 (adapted)

- (15) The concept of common projects, aimed at assisting airspace users and/or air navigation service providers to improve collective air navigation infrastructure, the provision of air navigation services and the use of airspace, in particular those that may be required for the implementation of the ATM Master Plan ~~☒~~ as endorsed by Council Decision 2009/320/EC<sup>28</sup>, in accordance with Article 1(2) of Council Regulation (EC) No 219/2007 ~~☒~~, should not prejudice pre-existing projects decided by one or several Member States with similar objectives. The provisions on financing of the deployment of common projects should not prejudice the manner in which these common projects are set up. The Commission may propose that funding, such as Trans-European Network or European Investment Bank funding, may be used in support of common projects, in particular to speed up the deployment of the SESAR programme, within the multiannual financial framework. Without prejudice to access to that funding, Member States should be free to decide how revenues generated by the auctioning of aviation sector allowances under the Emissions Trading Scheme are to be used and to consider in this context whether a share of such revenues might be used to finance common projects at the level of functional airspace blocks.
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↓ 550/2004 recital 27

~~The establishment and imposition of charges on airspace users should be reviewed by the Commission on a regular basis, in cooperation with Eurocontrol, and with national supervisory authorities and airspace users.~~

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↓ 551/2004 recital 8

~~The activities of Eurocontrol confirm that the route network and airspace structure cannot realistically be developed in isolation, as each individual Member State is an integral element of the European air traffic management network (EATMN), both inside and outside the Community.~~

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↓ 551/2004 recital 13

~~It is essential to achieve a common, harmonised airspace structure in terms of routes and sectors, to base the present and future organisation of airspace on common principles, and to design and manage airspace in accordance with harmonised rules.~~

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↓ new

- (16) The concept of a Network Manager entity is central to improving the performance of Air Traffic Management at network level, by centralising the provision of certain services, which are best performed at network level. In order to facilitate dealing with an aviation crisis, a coordination of such a crisis should be ensured by the Network Manager.

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<sup>28</sup> OJ L 95, 9.4.2009, p. 41

(17) Commission is convinced that the safe and efficient use of airspace can only be achieved through close cooperation between civil and military users of airspace, mainly based on the concept of flexible use of airspace and effective civil-military coordination as established by ICAO, it stresses the importance of enhancing civil military cooperation between civil and military users of airspace.

(18) Accuracy of information on airspace status and on specific air traffic situations and timely distribution of this information to civil and military controllers has a direct impact on the safety and efficiency of operations. Timely access to up-to-date information on airspace status is essential for all parties wishing to take advantage of airspace structures made available when filing or re-filing their flight plans.

↓ 550/2004 recital 16

~~Air navigation service providers should establish and maintain close cooperation with military authorities responsible for activities that may affect general air traffic, through appropriate arrangements.~~

↓ 550/2004 recital 17

~~The accounts of all air navigation service providers should provide for maximum transparency.~~

↓ 550/2004 recital 18

~~The introduction of harmonised principles and conditions for access to operational data should facilitate the provision of air navigation services and the operation of airspace users and airports under a new environment.~~

↓ 551/2004 recital 9

~~A progressively more integrated operating airspace should be established for en-route general air traffic in the upper airspace; the interface between upper and lower airspace should be identified accordingly.~~

↓ 551/2004 recital 10

~~A European upper flight information region (EUIR) encompassing the upper airspace under the responsibility of the Member States within the scope of this Regulation should facilitate common planning and aeronautical information publication in order to overcome regional bottlenecks.~~

↓ 1070/2009 recital 30 (adapted)

(19) The provision of modern, complete, high-quality and timely aeronautical information has a significant impact on safety and on facilitating access to ~~Community~~  Union ~~airspace~~  airspace and freedom of movement within it. Taking account of the ATM Master Plan, the ~~Community~~  Union ~~should~~  take the initiative to modernise this sector in cooperation with ~~Eurocontrol~~  the Network Manager

and ensure that users are able to access those data through a single public point of access, providing a modern, user-friendly and validated integrated briefing.

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↓ 551/2004 recital 11

~~Airspace users face disparate conditions of access to, and freedom of movement within, the Community airspace. This is due to the lack of harmonisation in the classification of airspace.~~

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↓ 551/2004 recital 12

~~The reconfiguration of airspace should be based on operational requirements regardless of existing boundaries. Common general principles for creating uniform functional airspace blocks should be developed in consultation with and on the basis of technical advice from Eurocontrol.~~

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↓ 551/2004 recital 14

~~The concept of the flexible use of airspace should be applied effectively; it is necessary to optimise the use of sectors of airspace, especially during peak periods for general air traffic and in high traffic airspace, by cooperation between Member States in respect of the use of such sectors for military operations and training. To that end, it is necessary to allocate the appropriate resources for an effective implementation of the concept of the flexible use of airspace, taking into account both civil and military requirements.~~

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↓ 551/2004 recital 15

~~Member States should endeavour to cooperate with neighbouring Member States to apply the concept of flexible use of airspace across national borders.~~

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↓ 551/2004 recital 16

~~Differences in the organisation of civil-military cooperation in the Community restrict uniform and timely airspace management and the implementation of changes. The success of the single European sky is dependent upon effective cooperation between civil and military authorities, without prejudice to the prerogatives and responsibilities of the Member States in the field of defence.~~

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↓ 551/2004 recital 17

~~Military operations and training should be safeguarded whenever the application of common principles and criteria is detrimental to their safe and efficient performance.~~

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↓ 551/2004 recital 18

~~Adequate measures should be introduced to improve the effectiveness of air traffic flow management in order to assist existing operational units, including the Eurocontrol Central Flow Management Unit, to ensure efficient flight operations.~~

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↓ 552/2004 recital 10

~~Implementing rules for interoperability should be drawn up for systems whenever necessary to complement or further refine the essential requirements; those rules should also be drawn up where necessary to facilitate the coordinated introduction of new, agreed and validated concepts of operation or technologies; compliance with those rules should be permanently maintained; those rules should rely on rules and standards developed by international organisations such as Eurocontrol or ICAO.~~

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↓ 552/2004 recital 7

~~It is therefore in the interest of all those involved in air traffic management to develop a new partnership approach allowing the balanced involvement of all parties and stimulating creativity and the sharing of knowledge, experience and risks; such partnership should aim at defining, in cooperation with industry, a coherent set of Community specifications that can fulfil the widest possible range of needs.~~

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↓ 552/2004 recital 11

~~The development and adoption of Community specifications concerning EATMN, its systems and constituents and associated procedures is an appropriate means of defining the technical and operational conditions necessary to meet the essential requirements and relevant implementing rules for interoperability; compliance with published Community specifications, which remains voluntary, creates a presumption of conformity with the essential requirements and the relevant implementing rules for interoperability.~~

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↓ 552/2004 recital 12

~~Community specifications should be established by the European standardisation bodies in conjunction with the European Organisation for Civil Aviation Equipment (Eurocae) and by Eurocontrol, in accordance with general Community standardisation procedures.~~

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↓ 552/2004 recital 13

~~The procedures governing the assessment of conformity or suitability for use of constituents should be based on the use of the modules covered by Council Decision 93/465/EEC of 22 July 1993 concerning the modules for the various phases of the conformity assessment procedures and the rules for the affixing and use of the CE conformity marking, which are intended to be used in the technical harmonisation directives<sup>29</sup>; as far as necessary, these modules should be expanded to cover specific requirements of the industries concerned.~~

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<sup>29</sup> OJL 220, 30.8.1993, p. 23.

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↓ 552/2004 recital 14

~~The market concerned is of small size and consists of systems and constituents used almost exclusively for air traffic management purposes and not intended for the general public; it would be therefore excessive to affix the CE mark to constituents as, on the basis of the assessment of conformity and/or suitability for use, the manufacturer's declaration of conformity is sufficient; that should not affect the obligation on manufacturers to affix the CE mark to certain constituents in order to certify their compliance with other Community legislation relating to them.~~

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↓ 552/2004 recital 15

~~The putting into service of air traffic management systems should be subject to verification of compliance with the essential requirements and relevant implementing rules for interoperability; use of Community specifications creates a presumption of conformity with the essential requirements and relevant implementing rules for interoperability.~~

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↓ 552/2004 recital 16

~~The full application of this Regulation should be accomplished by means of a transitional strategy designed to attain the objectives of this Regulation while not creating unjustified cost-benefit barriers to preservation of the existing infrastructure.~~

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↓ 549/2004 recital 7

~~Airspace constitutes a limited resource, the optimum and efficient use of which will be possible only if the requirements of all users are taken into account and where relevant, represented in the whole development, decision-making process and implementation of the single European sky, including the Single Sky Committee.~~

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↓ 549/2004 recital 25

~~The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission<sup>20</sup>.~~

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↓ 549/2004 recital 26 (adapted)

~~Article 8(2) of the Standard Rules of Procedure for committees<sup>24</sup> established in application of Article 7(1) of Decision 1999/468/EC provides a standard rule according to which the Chairman of a committee may decide to invite third parties to a meeting of that committee. If appropriate, the Chairman of the Single Sky Committee should invite representatives of Eurocontrol to take part in meetings as observers or experts;~~

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<sup>30</sup> OJ L 184, 17.7.1999, p. 23.

<sup>31</sup> OJ C 38, 6.2.2001, p. 3.

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↓ 549/2004 recital 18

~~Stakeholders such as air navigation service providers, airspace users, airports, manufacturing industry and professional staff representative bodies should have the possibility to advise the Commission on technical aspects of the implementation of the single European sky.~~

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↓ 549/2004 recital 12

~~It is desirable to extend the single European sky to European third countries, either within the framework of participation by the Community in the work of Eurocontrol, after the accession by the Community to Eurocontrol, or by means of agreements concluded by the Community with these countries.~~

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↓ 549/2004 recital 13

~~The accession of the Community to Eurocontrol is an important component in the creation of a pan-European airspace.~~

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↓ 549/2004 recital 14

~~In the process of creating the single European sky, the Community should, where appropriate, develop the highest level of cooperation with Eurocontrol in order to ensure regulatory synergies and consistent approaches, and to avoid any duplication between the two sides.~~

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↓ 549/2004 recital 15 (adapted)

~~In accordance with the conclusions of the High Level Group, Eurocontrol is the body that has the appropriate expertise to support the Community in its role as regulator. Accordingly, implementing rules should be developed, for matters falling within the remit of Eurocontrol as a result of mandates to that organisation, subject to the conditions to be included in a framework of cooperation between the Commission and Eurocontrol.~~

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↓ 549/2004 recital 16

~~The drafting of the measures necessary in order to create the single European sky requires broad-based consultations of economic and social stakeholders.~~

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↓ 550/2004 recital 8

~~Smooth operation of the air transport system also requires uniform and high safety standards for air navigation service providers.~~

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↓ 550/2004 recital 9

~~Arrangements should be made to harmonise the licensing systems for controllers, in order to improve the availability of controllers and to promote the mutual recognition of licences.~~

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↓ 550/2004 recital 28

~~Owing to the particular sensitivity of information concerning air navigation service providers, national supervisory authorities should not disclose information covered by the obligation of professional secrecy, without prejudice to the organisation of a system for monitoring and publishing the performance of those providers,~~

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↓ 549/2004 recital 19

~~The performance of the air navigation services system as a whole at European level should be assessed on a regular basis, with due regard to the maintenance of a high level of safety, to check the effectiveness of the measures adopted and to propose further measures.~~

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↓ 549/2004 recital 21

~~The impact of the measures taken to apply this Regulation should be evaluated in the light of reports to be submitted regularly by the Commission.~~

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↓ 551/2004 recital 19

~~It is desirable to reflect upon the extension of upper airspace concepts to the lower airspace, in accordance with a timetable and appropriate studies,~~

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↓ 549/2004 recital 22

~~This Regulation does not affect the power of Member States to adopt provisions in relation to the organisation of their armed forces. This power may lead Member States to adopt measures to ensure that their armed forces have sufficient airspace for adequate education and training purposes. Provision should therefore be made for a safeguards clause to enable this power to be exercised.~~

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↓ 552/2004 recital 19 (adapted)

~~For reasons of legal certainty it is important to ensure that the substance of certain provisions of Community legislation adopted on the basis of Directive 93/65/EEC remains in force unchanged. The adoption under this Regulation of the implementing rules corresponding to such provisions will necessitate a certain amount of time,~~

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↓ 552/2004 recital 18 (adapted)

~~Council Directive 93/65/EEC of 19 July 1993 on the definition and use of compatible technical specifications for the procurement of air traffic management equipment and systems<sup>32</sup> is limited to obligations of awarding entities; this Regulation is more comprehensive in that it addresses obligations of all actors, including air navigation service providers, airspace users, industry and airports, and provides both for rules applicable to all and for the adoption of Community specifications which, while being voluntary, creates a presumption of conformity with the essential requirements. Therefore, Directive 93/65/EEC, Commission Directive 97/15/EC of 25 March 1997 adopting Eurocontrol standards and amending Council Directive 93/65/EEC on the definition and use of compatible technical specifications for the procurement of air traffic management equipment and systems<sup>33</sup> and Commission Regulations (EC) No 2082/2000 of 6 September 2000 adopting Eurocontrol standards and amending Directive 97/15/EC<sup>34</sup> and (EC) No 980/2002 of 4 June 2002 amending Regulation (EC) No 2082/2000 should be repealed after a transitional period.~~

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↓ 552/2004 recital 8

~~The internal market is a Community objective and therefore measures taken under this Regulation should contribute to its progressive development in this sector.~~

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↓ 552/2004 recital 9

~~It is therefore appropriate to define essential requirements which should apply to the European air traffic management network, its systems, constituents and associated procedures.~~

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↓ 552/2004 recital 17

~~Within the framework of the relevant Community legislation, due account should be taken of the need to ensure:~~

~~— harmonised conditions with regard to the availability and efficient use of radio spectrum necessary for the implementation of the Single European Sky, including electromagnetic compatibility aspects;~~

~~— protection of the safety of life services from harmful interference;~~

~~— efficient and appropriate use of frequencies allocated to and managed exclusively by the aviation sector.~~

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<sup>32</sup> OJ L 187, 29.7.1993, p. 52. Directive as last amended by Regulation (EC) No 1882/2003 of the European Parliament and of the Council (OJ L 284, 31.10.2003, p. 1).

<sup>33</sup> OJ L 95, 10.4.1997, p. 16. Directive as last amended by Regulation (EC) No 2082/2000 (OJ L 254, 9.10.2000, p. 1).

<sup>34</sup> OJ L 254, 9.10.2000, p. 1. Regulation as last amended by Regulation (EC) No 980/2002 (OJ L 150, 8.6.2002, p. 38).

- (20) In order to take into account the changes introduced in Regulations (EC) No 1108/2009 and (EC) No 1070/2009 , it is necessary, in accordance with Article 65a of Regulation (EC) No 216/2008 of the European Parliament and of the Council of 20 February 2008 on common rules in the field of civil aviation and establishing a European Aviation Safety Agency<sup>35</sup>, to align the content of this Regulation with that of Regulation (EC) No 216/2008.
- (21) Furthermore, the technical details of Regulations (EC) No 549/2004, (EC) No 550/2004, (EC) No 551/2004 and (EC) No 552/2004, agreed in 2004 and 2009, should be brought up-to date as well as technical corrections made to take account of progress.
- (22) The geographical scope of this Regulation over the ICAO NAT region should be amended to take account of the existing and planned service provision arrangements and the need to ensure consistency in application of rules to the air navigation service providers and airspace users operating in that area.
- (23) In line with its roles as an operational organisation and the continuing reform of Eurocontrol, the function of the Network Manager should be further developed towards an industry-led partnership.
- (24) The concept of functional airspace blocks designed to improve the co-operation between air traffic service providers, is an important tool for improving the performance of the European ATM system. To further enhance this tool, the functional airspace blocks should be made more performance focused, based on industrial partnerships and industry should be given more freedom to modify them in order to reach and, where possible exceed, the performance targets.
- (25) The functional airspace blocks should operate in a flexible manner, bringing together service providers across Europe to capitalise on each other's strengths. This flexibility should allow for seeking synergies between providers regardless of their geographical location or nationality and allow for variable formats of service provision to emerge in the search for performance improvements.
- (26) To enhance the customer-focus of air navigation service providers and to increase the possibility of airspace users to influence decisions, which affect them, the consultation and participation of stakeholders in major operational decisions of the air navigation service providers should be made more effective.
- (27) The performance scheme is a central tool for economic regulation of ATM and the quality and independence of its decisions should be maintained and where possible improved.
- (28) In order to take into account technical or operational developments, in particular by amending annexes, or by supplementing the provisions on network management and performance scheme, the power to adopt acts in accordance with Article 290 of the

<sup>35</sup> OJ L 79, 19.3.2008, p.1.

Treaty on the Functioning of the European Union should be delegated to the Commission. The content and scope of each delegation is set out in detail in the relevant Articles. It is of particular importance that the Commission carries out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing-up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and Council.

(29) When adding to the list of network management services, the Commission should conduct a proper consultation of industry stakeholders.

(30) In order to ensure uniform conditions for the implementation of this Regulation, in particular with regard to the exercise of their powers by national supervisory authorities, provision of support services on an exclusive basis by a service provider or groupings thereof, corrective measures to ensure compliance with the Union-wide and associated local performance targets, review of compliance in relation to the charging scheme, governance and adoption of common projects for network related functions, functional airspace blocks, modalities of participation of stakeholders in major operational decisions of the air navigation service providers, access to and protection of data, electronic aeronautical information and technological development and interoperability of air traffic management, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers<sup>36</sup>.

(31) In accordance with Regulation (EU) No 182/2011, for the implementing acts adopted under this Regulation, the examination procedure should be used for the adoption of implementing acts of general.

(32) The advisory procedure should be used for the adoption of implementing acts of individual scope.

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↓ 549/2004 recital 20 (adapted)

(33) The penalties provided for with respect to infringements of this Regulation ~~and of the measures referred to in Article 3~~ should be effective, proportional and dissuasive, without reducing safety.

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↓ new

(34) The procurement of support services should be carried out, as applicable, in accordance with Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts<sup>37</sup> and Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy,

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<sup>36</sup> OJ L 55, 28.2.2011, p.13.

<sup>37</sup> OJ L 134, 30.4.2004, p.114.

transport and postal services sectors<sup>38</sup>. Account should also be taken of the guidelines set out in the Commission interpretative communication 2006/C179/02 on the Community law applicable to contract awards not or not fully subject to the provisions of the Public Procurement Directives<sup>39</sup>, as appropriate

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↓ 1070/2009 recital 42

- (35) The Ministerial Statement on Gibraltar Airport, agreed in Córdoba on 18 September 2006 (the Ministerial Statement), during the first Ministerial meeting of the Forum of Dialogue on Gibraltar, will replace the Joint Declaration on the Airport made in London on 2 December 1987, and the full compliance with that Statement will be deemed to constitute compliance with the 1987 Declaration.
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↓ 1070/2009 recital 43

- (36) This Regulation applies in full to Gibraltar Airport in the context and by virtue of the Ministerial Statement. Without prejudice to the Ministerial Statement, the application to Gibraltar Airport and all the measures related to its implementation shall conform fully with that Statement and all the arrangements contained therein.
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↓ 549/2004 recital 24 (adapted)

- (37) Since the objective of this Regulation, namely the ~~creation~~  implementation  of the Single European Sky, cannot be sufficiently achieved by the Member States, by reason of the transnational scale of the action, and can therefore be better achieved at ~~Community~~  Union  level, ~~while allowing for detailed implementing rules that take account of specific local conditions,~~ the ~~Community~~  Union  may adopt measures in accordance with the principle of subsidiarity, as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve this objective.

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<sup>38</sup> OJ L 134, 30.4.2004, p. 1

<sup>39</sup> OJ C 179, 1.8.2006, p. 2.

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↓ 552/2004

HAVE ADOPTED THIS REGULATION:

## CHAPTER I

### GENERAL PROVISIONS

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↓ 1070/2009 Art. 1.1 (adapted)  
⇒ new

#### *Article 1*

#### **Objective Subject matter and scope**

1. ⇒ This Regulation lays down rules for the creation and proper functioning of  ~~The objective of the sSingle European sSky initiative is to enhance~~  in order to ensure  current air traffic safety standards, to contribute to the sustainable development of the air transport system and to improve the overall performance of air traffic management (ATM) and air navigation services (ANS) for general air traffic in Europe, with a view to meeting the requirements of all airspace users. ~~This~~  The  sSingle European sSky shall comprise a coherent pan-European network of routes, ⇒ an integrated operating airspace,  network management and air traffic management systems based only on safety, efficiency and ~~technical considerations~~ ⇒ interoperability  , for the benefit of all airspace users. ~~In pursuit of this objective, this Regulation establishes a harmonised regulatory framework for the creation of the single European sky.~~

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↓ 1070/2009 Art. 1.2 (adapted)

2. The application of this Regulation ~~and of the measures referred to in Article 3~~ shall be without prejudice to Member States' sovereignty over their airspace and to the requirements of the Member States relating to public order, public security and defence matters, as set out in Article ~~38~~ ~~13~~. This Regulation ~~and the measures referred to in Article 3 do~~  does  not cover military operations and training.

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↓ 1070/2009 Art. 1.3 (adapted)

3. The application of this Regulation ~~and of the measures referred to in Article 3~~ shall be without prejudice to the rights and duties of Member States under the 1944 Chicago Convention on International Civil Aviation (the Chicago Convention). In this context, ~~an additional objective of this Regulation is,~~  seeks to assist,  in the fields it covers, ~~to assist~~ Member States in fulfilling their obligations under the Chicago Convention, by providing a basis for a common interpretation and uniform implementation of its provisions, and by ensuring that these provisions are duly taken into account in this Regulation and in the rules drawn up for its implementation.

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↓ 550/2004

~~CHAPTER I~~

~~GENERAL~~

~~Article 1~~

~~Scope and objective~~

~~1. Within the scope of the framework Regulation, this Regulation concerns the provision of air navigation services in the single European sky. The objective of this Regulation is to establish common requirements for the safe and efficient provision of air navigation services in the Community.~~

~~2. This Regulation shall apply to the provision of air navigation services for general air traffic in accordance with and within the scope of the framework Regulation.~~

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↓ 551/2004

~~CHAPTER I~~

~~GENERAL~~

~~Article 1~~

~~Objective and scope~~

~~1. Within the scope of the framework Regulation, this Regulation concerns the organisation and the use of airspace in the Single European Sky. The objective of this Regulation is to support the concept of a progressively more integrated operating airspace within the context of the common transport policy and to establish common procedures for design, planning and management ensuring the efficient and safe performance of air traffic management.~~

~~2. The use of airspace shall support the operation of the air navigation services as a coherent and consistent whole in accordance with Regulation (EC) No 550/2004 of the European Parliament and of the Council of 10 March 2004 on the provision of air navigation services in the single European sky (the service provision Regulation)<sup>40</sup>.~~

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<sup>40</sup> See page 10 of this Official Journal.

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↓ 551/2004 (adapted)  
⇒ new

~~43. Without prejudice to Article 10, ¶ This Regulation shall apply to the airspace within the ICAO EUR and AFI ⇒ and NAT ⇐ regions where Member States are responsible for the provision of air traffic services in accordance with the ~~service provision~~ ⊗ this ⊗ Regulation. Member States may also apply this Regulation to airspace under their responsibility within other ICAO regions, on condition that they inform the Commission and the other Member States thereof.~~

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↓ 551/2004

~~4. The Flight Information Regions comprised within the airspace to which this Regulation applies shall be published in the Official Journal of the European Union.~~

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↓ 1070/2009 Art. 1.1

~~54. The application of this Regulation to the airport of Gibraltar is understood to be without prejudice to the respective legal positions of the Kingdom of Spain and the United Kingdom of Great Britain and Northern Ireland with regard to the dispute over sovereignty over the territory in which the airport is situated.~~

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↓ 552/2004

#### ~~Article 1~~

#### **Objective and scope**

~~1. Within the scope of the framework Regulation, this Regulation concerns the interoperability of the EATMN.~~

~~2. This Regulation shall apply to the systems, their constituents and associated procedures identified in Annex I.~~

~~3. The objective of this Regulation is to achieve interoperability between the different systems, constituents and associated procedures of the EATMN, taking due account of the relevant international rules. This Regulation aims also at ensuring the coordinated and rapid introduction of new agreed and validated concepts of operations or technology in air traffic management.~~

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↓ 549/2004 (adapted)

#### *Article 2*

#### **Definitions**

For the purpose of this Regulation ~~and of the measures referred to in Article 3~~, the following definitions shall apply:



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↓ 549/2004

⇒ new

1. 'air traffic control (ATC) service' means a service provided for the purpose of:

(a) preventing collisions:

- between aircraft, and
- in the manoeuvring area between aircraft and obstructions; and

(b) expediting and maintaining an orderly flow of air traffic;

2. 'aerodrome control service' means an ATC service for aerodrome traffic;

3. 'aeronautical information service' means a service established within the defined area of coverage responsible for the provision of aeronautical information and data necessary for the safety, regularity, and efficiency of air navigation;

4. 'air navigation services' means air traffic services; communication, navigation and surveillance services; meteorological services for air navigation; and aeronautical information services;

5. 'air navigation service providers' means any public or private entity providing air navigation services for general air traffic;

6. 'airspace block' means an airspace of defined dimensions, in space and time, within which air navigation services are provided;

7. 'airspace management' means a planning ~~function~~ ⇒ service ⇐ with the primary objective of maximising the utilisation of available airspace by dynamic time-sharing and, at times, the segregation of airspace among various categories of airspace users on the basis of short-term needs;

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↓ 1070/2009 Art. 1.2(a)

8. 'airspace users' means operators of aircraft operated as general air traffic;

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↓ 549/2004

⇒ new

9. 'air traffic flow management' means a ~~function~~ ⇒ service ⇐ established with the objective of contributing to a safe, orderly and expeditious flow of air traffic by ensuring that ATC capacity is utilised to the maximum extent possible, and that the traffic volume is compatible with the capacities declared by the appropriate air traffic service providers;

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↓ 1070/2009 Art. 1.2(b)  
⇒ new

10. 'air traffic management (ATM)' means the aggregation of the airborne and ground-based ~~functions~~ ⇒ services ⇐ (air traffic services, airspace management and air traffic flow management) required to ensure the safe and efficient movement of aircraft during all phases of operations;

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↓ 549/2004

11. 'air traffic services' means the various flight information services, alerting services, air traffic advisory services and ATC services (area, approach and aerodrome control services);

12. 'area control service' means an ATC service for controlled flights in a block of airspace;

13. 'approach control service' means an ATC service for arriving or departing controlled flights;

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↓ 1070/2009 Art. 1.2(c)

~~1413a~~. 'ATM Master Plan' means the plan endorsed by Council Decision 2009/320/EC<sup>41</sup>, in accordance with Article 1(2) of Council Regulation (EC) No 219/2007 of 27 February 2007 on the establishment of a Joint Undertaking to develop the new generation European air traffic management system (SESAR)<sup>42</sup>;

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↓ new

15. 'aviation crisis' means circumstances under which airspace capacity is abnormally reduced as a result of major adverse weather circumstances or the unavailability of large airspace parts either through natural or political reasons;

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↓ 549/2004

~~1614~~. 'bundle of services' means two or more air navigation services;

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↓ 1070/2009 Art. 1.2(d)

~~1715~~. 'certificate' means a document issued by a national supervisory authority in any form complying with national law, which confirms that an air navigation service provider meets the requirements for providing a specific service;

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<sup>41</sup> OJ L 95, 9.4.2009, p. 41.

<sup>42</sup> OJ L 64, 2.3.2007, p. 1.

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↓ 549/2004

~~1816.~~ ‘communication services’ means aeronautical fixed and mobile services to enable ground-to-ground, air-to-ground and air-to-air communications for ATC purposes;

~~17. ‘European air traffic management network’ (EATMN) means the collection of systems listed in Annex I to Regulation (EC) No 552/2004 of the European Parliament and of the Council of 10 March 2004 on the interoperability of the European air traffic management network (the interoperability Regulation)<sup>43</sup> enabling air navigation services in the Community to be provided, including the interfaces at boundaries with third countries;~~

~~18. ‘concept of operation’ means the criteria for the operational use of the EATMN or of part thereof;~~

19. ‘constituents’ means tangible objects such as hardware and intangible objects such as software upon which the interoperability of the European Air Traffic management Network (EATMN) depends;

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↓ new

20. ‘declaration’ means for purposes of ATM/ANS, any written statement:

- on the conformity or suitability for use of systems and constituents issued by an organisation engaged in the design, manufacture and maintenance of ATM/ANS systems and constituents;
  - on the compliance with applicable requirements of a service or a system to be put into operation issued by a service provider";
  - on the capability and means of discharging the responsibilities associated with certain flight information services
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↓ 549/2004 (adapted)

~~20. ‘Eurocontrol’ is the European Organisation for the Safety of Air Navigation set up by the International Convention of 13 December 1960 relating to Cooperation for the Safety of Air Navigation<sup>44</sup>;~~

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↓ 1070/2009 Art. 1.2(f) (adapted)

~~2122.~~ ‘flexible use of airspace’ means an airspace management concept applied in the European Civil Aviation Conference area on the basis of the ‘Airspace management handbook for the application of the concept of the flexible use of airspace’ issued by

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<sup>43</sup> See page 33 of this Official Journal.

<sup>44</sup> Convention modified by the protocol of 12 February 1981 and revised by the protocol of 27 June 1997.

⊗ the European Organisation for the Safety of Air Navigation ⊗ (Eurocontrol)  
⊗<sup>45</sup> ⊗ ;

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↓ 549/2004

~~23. 'flight information region' means an airspace of defined dimensions within which flight information services and alerting services are provided;~~

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↓ 1070/2009 Art. 1.2(g)

~~223a.~~ 'flight information service' means a service provided for the purpose of giving advice and information useful for the safe and efficient conduct of flights;

~~2323b.~~ 'alerting service' means a service provided to notify relevant organisations regarding aircraft in need of search and rescue aid, and to assist such organisations as required;

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↓ 549/2004

~~24. 'flight level' means a surface of constant atmospheric pressure which is related to the specific pressure datum of 1013,2 hectopascals and is separated from other such surfaces by specific pressure intervals;~~

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↓ 1070/2009 Art. 1.2(h)

~~2425.~~ 'functional airspace block' means an airspace block based on operational requirements and established regardless of State boundaries, where the provision of air navigation services and related functions are performance-driven and optimised with a view to introducing, in each functional airspace block, enhanced cooperation among air navigation service providers or, where appropriate, an integrated provider;

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↓ 549/2004 (adapted)

~~2526.~~ 'general air traffic' means all movements of civil aircraft, as well as all movements of State aircraft (including military, customs and police aircraft) when these movements are carried out in conformity with the procedures of the ⊗ International Civil Aviation Organisation (ICAO), as established by the 1944 Chicago Convention on International Civil Aviation ⊗ ICAO;

~~27. 'ICAO' means the International Civil Aviation Organisation, as established by the 1944 Chicago Convention on International Civil Aviation;~~

~~2628.~~ 'interoperability' means a set of functional, technical and operational properties required of the systems and constituents of the EATMN and of the procedures for its operation, in order to enable its safe, seamless and efficient operation.

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<sup>45</sup> ⊗ Eurocontrol has been set up by the International Convention of 13 December 1960 relating to Cooperation for the Safety of Air Navigation, as modified by the protocol of 12 February 1981 and revised by the protocol of 27 June 1997. ⊗

Interoperability is achieved by making the systems and constituents compliant with the essential requirements;

~~2729.~~ 'meteorological services' means those facilities and services that provide aircraft with meteorological forecasts, briefs and observations as well as any other meteorological information and data provided by States for aeronautical use;

~~2830.~~ 'navigation services' means those facilities and services that provide aircraft with positioning and timing information;

~~2931.~~ 'operational data' means information concerning all phases of flight that are required to take operational decisions by air navigation service providers, airspace users, airport operators and other actors involved;

~~32.~~ 'procedure', as used in the context of the interoperability Regulation, means a standard method for either the technical or the operational use of systems, in the context of agreed and validated concepts of operation requiring uniform implementation throughout the EATMN;

~~3033.~~ 'putting into service' means the first operational use after the initial installation or an upgrade of a system;

~~3134.~~ 'route network' means a network of specified routes for channelling the flow of general air traffic as necessary for the provision of ATC services;

~~35.~~ 'routing' means the chosen itinerary to be followed by an aircraft during its operation;

~~36.~~ 'seamless operation' means the operation of the EATMN in such a manner that from the user's perspective it functions as if it were a single entity;

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↓ 549/2004

~~3238.~~ 'surveillance services' means those facilities and services used to determine the respective positions of aircraft to allow safe separation;

~~3339.~~ 'system' means the aggregation of airborne and ground-based constituents, as well as space-based equipment, that provides support for air navigation services for all phases of flight;

~~3440.~~ 'upgrade' means any modification that changes the operational characteristics of a system;

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↓ 1070/2009 Art. 1.2(j)

~~3541.~~ 'cross-border services' means any situation where air navigation services are provided in one Member State by a service provider certified in another Member State;

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↓ new

36. 'national supervisory authority' means the national body or bodies entrusted by a Member State with the tasks of supervision in accordance with this Regulation and the national competent authorities entrusted with the tasks provided for in Article 8b of Regulation (EC) No 216/2008;

37. 'support services' means air navigation services other than air traffic services as well as other services and activities, which are linked to, and support the provision of air navigation services;

38. 'local performance targets' means performance targets set by the Member States at local level, namely functional airspace block, national, charging zone or airport level.

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↓ 549/2004

### ~~Article 3~~

#### ~~Fields for action by the Community~~

~~1. This Regulation establishes a harmonised regulatory framework for the creation of the single European sky in conjunction with:~~

~~(a) Regulation (EC) No 551/2004 of the European Parliament and of the Council of 10 March 2004 on the organisation and use of the airspace in the Single European Sky (the airspace Regulation)<sup>46</sup>;~~

~~(b) Regulation (EC) No 550/2004 of the European Parliament and of the Council of 10 March 2004 on the provision of air navigation services in the Single European Sky (the service provision Regulation)<sup>47</sup>; and~~

~~(c) Regulation (EC) No 552/2004 of the European Parliament and of the Council of 10 March 2004 on the interoperability of the European Air Traffic Management network (the interoperability Regulation)<sup>48</sup>;~~

~~and with the implementing rules adopted by the Commission on the basis of this Regulation and the regulations referred to above.~~

~~2. The measures referred to in paragraph 1 shall apply subject to the provisions of this Regulation.~~

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<sup>46</sup> See page 20 of this Official Journal.

<sup>47</sup> See page 10 of this Official Journal.

<sup>48</sup> See page 26 of this Official Journal.

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↓ 1070/2009 Art. 1.3 (adapted)  
⇒ new

## CHAPTER II

### ⊗ NATIONAL AUTHORITIES ⊗

#### *Article ~~34~~*

#### **National supervisory authorities**

1. Member States shall, jointly or individually, either nominate or establish a body or bodies as their national supervisory authority in order to assume the tasks assigned to such authority under this Regulation ~~and under the measures referred to in Article 3.~~

2. The national supervisory authorities shall be ⇒ legally distinct and ⇐ independent of ⇐ in particular in organisational, hierarchical and decision-making terms, from any ⇐ air navigation service providers ⇒ or any private or public entity having an interest in the activities of such providers ⇐. ~~This independence shall be achieved through adequate separation, at the functional level at least, between the national supervisory authorities and such providers.~~

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↓ new

3. Without prejudice to paragraph 2, the national supervisory authorities may be joined in organisational terms with other regulatory bodies and/or safety authorities.

4. The national supervisory authorities that are not legally distinct from any air navigation service providers or any private or public entity having an interest in the activities of such providers, as provided for in paragraph 2, on the date of entry into force of this Regulation shall meet this requirement by 1 January 2020 at the latest.

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↓ 1070/2009 Art. 1.3 (adapted)  
⇒ new

~~35.~~ ⊗ The ⊗ ~~N~~ational supervisory authorities shall exercise their powers impartially, independently and transparently. ~~This shall be achieved by applying appropriate management and control mechanisms~~ ⇒ In particular, they shall be organised, staffed, managed and financed so as to allow them to exercise their powers in that manner. ⇐, ~~including within the administration of a Member State. However, this shall not prevent the national supervisory authorities from exercising their tasks within the rules of organisation of national civil aviation authorities or any other public bodies~~

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↓ new

6. Staff of the national supervisory authorities shall:

(a) be recruited under clear and transparent rules which guarantee their independence and as regards persons in charge of strategic decisions, be appointed by the national cabinet or council of ministers or another public authority which does not directly control, or benefit from the air navigation service providers;

(b) be selected in a transparent procedure on the basis of their specific qualifications, including appropriate competence and relevant experience inter alia in the field of auditing, air navigation services and systems;

(c) act independently in particular from any interest related to air navigation service providers and shall not seek or take instructions from any government or other public or private entity when carrying out the functions of the national supervisory authority;

(d) as regards persons in charge of strategic decisions, make an annual declaration of commitment and declaration of interests indicating any direct or indirect interests that may be considered prejudicial to their independence and which may influence the performance of their functions; and

(e) as regards persons in charge of strategic decisions, audits or other functions directly linked to oversight or performance targets of air navigation service providers, have no professional position or responsibility with any of the air navigation service providers after their term in the national supervisory authority, for a period of at least one year.

↓ 1070/2009 Art. 1.3  
⇒ new

74. Member States shall ensure that national supervisory authorities have the necessary resources and capabilities to carry out the tasks assigned to them under this Regulation in an efficient and timely manner. ⇒ The national supervisory authorities shall have full authority over the recruitment and management of their staff based on their own appropriations stemming from inter alia route charges to be set in proportion to the tasks to be fulfilled by the authority in accordance with Article 4. ⇐

85. Member States shall notify the Commission of the names and addresses of the national supervisory authorities, as well as changes thereto, and of the measures taken to ensure compliance with ⇒ this Article ⇐ ~~paragraphs 2, 3 and 4.~~

↓ new

9. The Commission shall establish detailed rules laying down the modalities of the recruitment and selection procedures for the application of paragraphs 6(a) and (b). Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 27(3).

↓ 1070/2009 Art. 2.1 (adapted)

#### *Article ~~42~~*

### **Tasks of the national supervisory authorities**



1. The national supervisory authorities referred to in Article ~~3 4~~ of the framework Regulation shall ~~be~~ entrusted in particular with the following tasks: ~~be~~

(a) ~~ensure~~ ensuring ~~the appropriate~~ supervision of the application of this Regulation, in particular with regard to the safe and efficient operation of air navigation service providers which provide services relating to the airspace falling under the responsibility of the Member State which nominated or established the relevant authority;

↓ new

(b) granting of certificates to air navigation services providers in accordance with Article 8b of Regulation (EC) No 216/2008 and overseeing the application of the conditions under which they have been granted;

(c) issuing licenses, ratings, endorsements and certificates for air traffic controllers in accordance with Article 8c of Regulation (EC) No 216/2008 and overseeing the application of the conditions under which they have been issued;

(d) drawing up performance plans and monitoring their implementation in accordance with Article 11;

(e) monitoring the implementation of the charging scheme in accordance with Articles 12 and 13;

(f) approving the conditions of access to operational data in accordance with Article 22; and

(g) supervising declarations and the putting into service of systems.

↓ 1070/2009 Art. 2.1 (adapted)  
⇒ new

2. ~~To this end, e~~Each national supervisory authority shall organise proper inspections and surveys to verify compliance with the requirements of this Regulation ~~including human resources requirements for the provision of air navigation services~~. The air navigation service provider concerned shall facilitate such work.

↓ new

## Article 5

### Co-operation between national supervisory authorities

1. The national supervisory authorities shall exchange information about their work and decision-making principles, practices and procedures as well as implementation of Union law. They shall cooperate for the purpose of coordinating their decision-making across the Union. The national supervisory authorities shall participate and work together in a network that convenes at regular intervals. The Commission and the European Union Agency for Aviation ( hereafter "EAA") shall be members, coordinate and support the work of the network and make recommendations to the network, as appropriate. The Commission and EAA shall

facilitate active cooperation of the national supervisory authorities and exchanges and use of staff between the national supervisory authorities based on a pool of experts to be set up by EAA in accordance with Article 17(2)(f) of Regulation (EC) No 216/2008.

Subject to the rules on data protection provided for in Article 22 of this Regulation and in Regulation (EC) No 45/2001, the Commission shall support the exchange of the information referred to in the first and second subparagraph of this paragraph among the members of the network, possibly through electronic tools, respecting the confidentiality of business secrets of air navigation service providers.

2. The national supervisory authorities shall cooperate closely, including through working arrangements, for the purposes of mutual assistance in their monitoring tasks and handling of investigations and surveys.

↓ 1070/2009 Art. 2.1  
⇒ new

3. In respect of functional airspace blocks that extend across the airspace falling under the responsibility of more than one Member State, the Member States concerned shall conclude an agreement on the supervision provided for in this Article with regard to the air navigation service providers providing services relating to those blocks. ⇒ The national supervisory authorities concerned shall establish a plan specifying the modalities of their co-operation with a view to giving effect to that agreement. ⇐

↓ 1070/2009 Art. 2.1 (adapted)

4. National supervisory authorities shall cooperate closely to ensure adequate supervision of air navigation service providers holding a valid certificate from one Member State that also provide services relating to the airspace falling under the responsibility of another Member State. Such cooperation shall include arrangements for the handling of cases involving non-compliance with ☒ this Regulation and with ☒ the applicable common requirements ~~set out~~ ☒ adopted ☒ in ☒ accordance with ☒ Article ☒ 8b(1) of Regulation (EC) No 216/2008 ☒ ~~or with the conditions set out in Annex H.~~

↓ 1070/2009 Art. 2.1 (adapted)  
⇒ new

5. In the case of ~~cross-border~~ provision of air navigation services ⇒ in an airspace falling under the responsibility of another Member State ⇐, ~~such~~ ☒ the ☒ arrangements ⇒ referred to in paragraphs 2 and 4 ⇐ shall include an agreement on the mutual recognition of the supervisory tasks set out in Article 4(1) and (2) and of the results of these tasks. This mutual recognition shall apply also where arrangements for recognition between national supervisory authorities are made for the certification process of service providers.

6. If permitted by national law and with a view to regional cooperation, national supervisory authorities may also conclude agreements regarding the division of responsibilities regarding supervisory tasks.

*Article 63*

**Qualified entities**

1. National supervisory authorities may decide to delegate in full or in part the inspections and surveys referred to in Article 4 ~~2~~(2) to qualified entities that fulfil the requirements set out in Annex I.

2. Such a delegation granted by a national supervisory authority shall be valid within the ~~Community~~ ☒ Union ☒ for a renewable period of three years. National supervisory authorities may instruct any of the qualified entities located in the ☒ Union ☒ ~~Community~~ to undertake these inspections and surveys.

~~Article 8~~

~~Notified bodies~~

~~3~~3. Member States shall notify the Commission, ⇒ EAA ⇐ and the other Member States of the ~~bodies~~ ☒ qualified entities to which they have delegated tasks in accordance with paragraph 1 ☒ ~~they have appointed, to carry out tasks pertaining to the assessment of conformity or suitability for use referred to in Article 5, and/or the verification referred to in Article 6,~~ indicating each ☒ entity ☒ ~~body's~~ area of responsibility and its identification number ☒ and of any changes in this respect ☒ ~~obtained from the Commission.~~ The Commission shall publish in the *Official Journal of the European Union* the list of ☒ qualified entities ☒ ~~bodies~~, their identification numbers and areas of responsibility, and shall keep the list updated.

~~2. Member States shall apply the criteria provided for in Annex V for the assessment of the bodies to be notified. Bodies meeting the assessment criteria provided for in the relevant European standards shall be deemed to meet the said criteria.~~

~~3~~4. Member States shall withdraw ☒ the delegation ☒ ~~notification~~ of a ~~notified body~~ ☒ qualified entity ☒ which no longer meets the ☒ requirements set out ☒ ~~criteria provided for in Annex I V.~~ It shall forthwith inform the Commission, ⇒ EAA ⇐ and the other Member States thereof.

~~4. Without prejudice to the requirements referred to in paragraphs 1, 2 and 3, Member States may decide to appoint organisations recognised in conformity with Article 3 of the service provision Regulation as notified bodies.~~

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↓ new

5. Bodies nominated before the entry into force of this Regulation as notified bodies in accordance with Article 8 of Regulation (EC) No 552/2004, shall be considered to be qualified entities for the purposes of this Article.

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↓ 1070/2009 Art. 1.5  
⇒ new

#### *Article ~~710~~*

### **Consultation of stakeholders**

1. ~~The Member States~~ ⇒ National supervisory authorities ⇐, acting in accordance with their national legislation, shall establish consultation mechanisms for appropriate involvement of stakeholders, including professional staff representative bodies ⇒ for the exercise of their tasks ⇐, in the implementation of the ~~Single European Sky~~.

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↓ new

2. The stakeholders may include:

- air navigation service providers,
  - airport operators,
  - relevant airspace users or relevant groups representing airspace users,
  - military authorities,
  - manufacturing industry,
  - professional staff representative bodies.
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↓ 550/2004 (adapted)

## **CHAPTER III**

### ~~**RULES FOR THE SERVICE PROVISION OF SERVICES**~~

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↓ 550/2004 (adapted)  
⇒ new

#### ~~Article 6~~

### ~~Common requirements~~

~~Common requirements for the provision of air navigation services shall be established in accordance with the procedure referred to in Article 5(3) of the framework Regulation. The common requirements shall include the following:~~

~~technical and operational competence and suitability,~~

~~systems and processes for safety and quality management,~~

~~reporting systems,~~

~~quality of services,~~

~~financial strength,~~

~~liability and insurance cover,~~

~~ownership and organisational structure, including the prevention of conflicts of interest,~~

~~human resources, including adequate staffing plans,~~

~~security.~~

#### Article 87

### **Certification of air navigation service providers**

1. The provision of all air navigation services within the ~~Community~~ ☒ Union ☒ shall be subject to certification by ☐ or declaration to, ☐ ~~Member States~~ ☐ national supervisory authorities or EAA in accordance with Article 8b of Regulation (EC) No 216/2008 ☐ .

↓ 550/2004

~~2. Applications for certification shall be submitted to the national supervisory authority of the Member State where the applicant has its principal place of operation and, if any, its registered office.~~

↓ new

2. The certification process shall also ensure that the applicants can demonstrate sufficient financial strength and have obtained liability and insurance cover, where this is not guaranteed by the Member State concerned.

↓ 550/2004 (adapted)

☐ new

~~3. National supervisory authorities shall issue certificates to air navigation service providers where they comply with the common requirements referred to in Article 6. Certificates may be issued individually for each type of air navigation service as defined in Article 2 of the framework Regulation, or for a bundle of such services, *inter alia*, where a provider of air~~

~~traffic services, whatever its legal status, operates and maintains its own communication, navigation and surveillance systems. The certificates shall be checked on a regular basis.~~

~~43. ⇨ The certificate shall provide for ⇨ Certificates shall specify the rights and obligations of air navigation service providers, including non-discriminatory access to services for airspace users, with particular regard to safety. Certification ~~may~~ ☒ shall ☒ be subject ~~only~~ to the conditions set out in Annex II. ~~Such conditions shall be objectively justified, non-discriminatory, proportionate and transparent.~~~~

~~5. Notwithstanding paragraph 1, Member States may allow the provision of air navigation services in all or part of the airspace under their responsibility without certification in cases where the provider of such services offers them primarily to aircraft movements other than general air traffic. In those cases, the Member State concerned shall inform the Commission and the other Member States of its decision and of the measures taken to ensure maximum compliance with the common requirements.~~

↓ 1070/2009 Art. 2.3 (adapted)  
⇨ new

~~46. Without prejudice to Articles 8 and 9 ⇨ The issue of certificates shall confer on air navigation service providers the possibility of offering their services to Member States, other air navigation service providers, airspace users and airports within the Community ☒ Union ☒ . ⇨ With regard to support services this possibility shall be subject to the compliance with Article 10(2). ⇨~~

~~7. National supervisory authorities shall monitor compliance with the common requirements and with the conditions attached to the certificates. Details of such monitoring shall be included in the annual reports to be submitted by Member States pursuant to Article 12(1) of the framework Regulation. If a national supervisory authority finds that the holder of a certificate no longer satisfies such requirements or conditions, it shall take appropriate measures while ensuring continuity of services on condition that safety is not compromised. Such measures may include the revocation of the certificate.~~

↓ 550/2004

~~8. A Member State shall recognise any certificate issued in another Member State in accordance with this Article.~~

~~9. In exceptional circumstances, Member States may postpone compliance with this Article beyond the date resulting from Article 19(2) by six months. Member States shall notify the Commission of such postponement, giving their reasons therefor.~~

↓ 1070/2009 Art. 2.4 (adapted)  
⇨ new

## *Article 9~~8~~*

### Designation of air traffic service providers

1. Member States shall ensure the provision of air traffic services on an exclusive basis within specific airspace blocks in respect of the airspace under their responsibility. For this purpose, Member States shall designate an air traffic service provider holding a valid certificate  or declaration  in the ~~Community~~  Union .

2. For the provision of cross-border services, Member States shall ensure that compliance with this Article and Article ~~18~~ ~~19~~(3) is not prevented by their national legal system requiring that air traffic service providers providing services in the airspace under the responsibility of that Member State  fulfil one of the following conditions  :

(a) be owned directly or through a majority holding by that Member State or its nationals;

(b) have their principal place of operation or registered office in the territory of that Member State ~~or~~

(c) use only facilities in that Member State.

3. Member States shall define the rights and obligations to be met by the designated air traffic service providers. The obligations may include conditions for the timely supply of relevant information enabling all aircraft movements in the airspace under their responsibility to be identified.

↓ 1070/2009 Art. 2.4  
 new

4. Member States shall have discretionary powers in choosing an air traffic service provider, on condition that the latter ~~fulfils the requirements and conditions referred to in Articles 6 and 7~~  is certified or declared in accordance with Regulation (EC) No 216/2008 .

↓ 1070/2009 Art. 2.4

5. In respect of functional airspace blocks established in accordance with Article ~~16~~ ~~9a~~ that extend across the airspace under the responsibility of more than one Member State, the Member States concerned shall jointly designate, in accordance with paragraph 1 of this Article, one or more air traffic service providers, at least one month before implementation of the airspace block.

6. Member States shall inform the Commission and other Member States immediately of any decision within the framework of this Article regarding the designation of air traffic service providers within specific airspace blocks in respect of the airspace under their responsibility.

↓ new

#### *Article 10*

### **Provision of support services**

1. Member States shall take all necessary measures to ensure that, in accordance with this Article, providers of support services can compete within the Union on the basis of equitable, non-discriminatory and transparent conditions for the purpose of providing these services.

The requirement set out in this Article shall be met at the latest by 1 January 2020.

2. Member States shall take all necessary measures to ensure that the provision of air traffic services is separated from the provision of support services. This separation shall include the requirement that air traffic services and support services are provided by separate undertakings.

3. In choosing the provider of support services, in particular cost efficiency, overall service quality and safety of services shall be taken into account by the entity procuring those services.

4. A provider of support services may only be chosen to provide services in the airspace of a Member State, when:

(a) it is certified in accordance with Article 8b of Regulation (EC) No 216/2008;

(b) its principal place of business is located in the territory of a Member State;

(c) Member States and/or nationals of Member States own more than 50 % of the service provider and effectively control it, whether directly or indirectly through one or more intermediate undertakings, except as provided for in an agreement with a third country to which the Union is a party; and

(d) the service provider fulfils national security and defence requirements.

5. Support services related to the operations of the EATMN may be provided in a centralised manner by the Network Manager by adding those services to the services referred to in Article 17(2), in accordance with Article 17(3). They may also be provided on an exclusive basis by an air navigation service provider or groupings thereof, in particular those related to the provision of the ATM infrastructures. The Commission shall specify the modalities for the selection of providers or groupings thereof, based on the professional capacity and ability to provide services in an impartial and cost-effective manner, and establish an overall assessment of the estimated costs and benefits of the provision of the support services in a centralised manner. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 27(3). The Commission shall designate providers or groupings thereof in accordance with those implementing acts.

↓ 550/2004

#### ~~Article 9~~

#### ~~Designation of providers of meteorological services~~

~~1. Member States may designate a provider of meteorological services to supply all or part of meteorological data on an exclusive basis in all or part of the airspace under their responsibility, taking into account safety considerations.~~

~~2. Member States shall inform the Commission and other Member States without delay of any decision within the framework of this Article regarding the designation of a provider of meteorological services.~~



## Article 11

### Performance scheme

1. To improve the performance of air navigation services and network ⇒ services ⇐ functions in the ~~Single European Sky~~, a performance scheme for air navigation services and network ⇒ services ⇐ functions shall be set up. It shall include:

(a) ~~Community~~ ⊗ Union ⊗ -wide ⇒ and associated local ⇐ performance targets on the key performance areas of safety, the environment, capacity and cost-efficiency;

(b) national plans or plans for functional airspace blocks, including performance targets, ensuring ⇒ compliance ⇐ consistency with the ~~Community~~ ⊗ Union ⊗ -wide ⇒ and associated local ⇐ performance targets; and

(c) periodic review, monitoring and benchmarking of the performance of air navigation services and network ⇒ services ⇐ functions.

2. ~~In accordance with the regulatory procedure referred to in Article 5(3),~~ The Commission ⇒ shall ⇐ ~~may~~ designate ~~Eurocontrol or another~~ ⇒ an independent, ⇐ impartial and competent body to act as a 'performance review body'. The role of the performance review body shall be to assist the Commission, in coordination with the national supervisory authorities, and to assist the national supervisory authorities on request in the implementation of the performance scheme referred to in paragraph 1. ⇒ Technical assistance to the performance review body may be provided by EAA and Eurocontrol or another competent entity ⇐. ~~The Commission shall ensure that the performance review body acts independently when carrying out the tasks entrusted to it by the Commission.~~

3. ~~(a) The Community wide performance targets for the air traffic management network shall be adopted by the Commission in accordance with the regulatory procedure referred to in Article after taking into account the relevant inputs from national supervisory authorities at national level or at the level of functional airspace blocks.~~

~~(b)~~ The national or functional airspace block plans referred to in point (b) of paragraph 1 (b), shall be drawn up by national supervisory authorities and adopted by the Member State(s). These plans shall include binding national ⇒ local ⇐ targets ~~or targets at the level of functional airspace blocks~~ and an appropriate incentive scheme as adopted by the Member State(s). Drafting of the plans shall be subject to consultation with air navigation service providers, airspace users' representatives, and, where relevant, airport operators and airport coordinators.

~~4. (c)~~ The ⇒ compliance ⇐ consistency of the national or functional airspace block ⇒ plans and local ⇐ targets with the ~~Community~~ ⊗ Union ⊗ -wide ~~and~~ performance targets shall be assessed by the Commission ⇒ in co-operation with the

performance review body ~~using the assessment criteria referred to in point (d) of paragraph 6.~~

In the event that the Commission identifies that ~~the national or functional airspace block plans or the local~~ ~~one or more national or functional airspace block~~ targets do not ~~comply with~~ ~~meet the~~ ~~Union-wide targets~~ ~~assessment criteria~~, it may ~~require~~ ~~decide, in accordance with the advisory procedure referred to in Article 5(2)~~, ~~the Member States concerned to take the necessary corrective measures. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 27(2).~~ ~~to issue a recommendation that the national supervisory authorities concerned propose revised performance target(s). The Member State(s) concerned shall adopt revised performance targets and appropriate measures which shall be notified to the Commission in due time.~~

~~Where the Commission finds that the revised performance targets and appropriate measures are not adequate, it may decide, in accordance with the regulatory procedure referred to in Article 5(3), that the Member States concerned shall take corrective measures.~~

~~Alternatively, the Commission may decide, with adequate supporting evidence, to revise the Community wide performance targets in accordance with the regulatory procedure referred to in Article 5(3).~~

~~5. (d)~~ The reference period for the performance scheme, referred to in paragraph 1, shall cover a minimum of three years and a maximum of five years. During this period, in the event that the ~~local~~ ~~national or functional airspace block~~ targets are not met, the Member States ~~concerned~~ ~~and/or the national supervisory authorities~~ shall ~~define and~~ ~~apply the appropriate~~ measures ~~designed to rectify the situation~~ ~~they have defined~~. ~~Where the Commission finds that these measures are not sufficient to rectify the situation, it may decide, that the Member States concerned shall take necessary corrective measures or sanctions. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 27 (2).~~ ~~The first reference period shall cover the first three years following the adoption of the implementing rules referred to in paragraph 6.~~

~~6. (e)~~ The Commission shall carry out regular assessments of the achievement of the ~~Union-wide and associated local~~ performance targets ~~and present the results to the Single Sky Committee.~~

~~74.~~ The ~~following procedures shall apply to the~~ performance scheme referred to in paragraph 1 ~~shall be based on~~ :

(a) collection, validation, examination, evaluation and dissemination of relevant data related to the performance of air navigation services and network ~~services~~ ~~functions~~ from all relevant parties, including air navigation service providers, airspace users, airport operators, national supervisory authorities, Member States and Eurocontrol;

(b) selection of appropriate key performance areas on the basis of ICAO Document No 9854 ‘Global air traffic management operational concept’, and consistent with those identified in the Performance Framework of the ATM Master Plan, including safety, the environment, capacity and cost-efficiency areas, adapted

where necessary in order to take into account the specific needs of the ~~Single~~ European ~~Sk~~y and relevant objectives for these areas and definition of a limited set of key performance indicators for measuring performance;

- (c) establishment  $\Rightarrow$  and revision  $\Leftarrow$  of ~~Community~~  $\boxtimes$  Union  $\boxtimes$ -wide  $\Rightarrow$  and associated local  $\Leftarrow$  performance targets that shall be defined taking into consideration inputs identified at national level or at the level of functional airspace blocks;

↓ 1070/2009 Art. 1.5 (adapted)  
 $\Rightarrow$  new

~~6. For the detailed functioning of the performance scheme, the Commission shall by 4 December 2011 and within a suitable time frame with a view to meeting the relevant deadlines laid down in this Regulation, adopt implementing rules in accordance with the regulatory procedure referred to in Article 5(3). These implementing rules shall cover the following:~~

- ~~(d)~~~~(e)~~ criteria for the setting up by the national supervisory authorities of the national or functional airspace block performance plans, containing the  $\Rightarrow$  local  $\Leftarrow$  ~~national or functional airspace block~~ performance targets and the incentive scheme. The performance plans shall:

- (i) be based on the business plans of the air navigation service providers;
- (ii) address all cost components of the national or functional airspace block cost base;
- (iii) include binding  $\Rightarrow$  local  $\Leftarrow$  performance targets  $\Rightarrow$  compliant  $\Leftarrow$  ~~consistent~~ with the ~~Community~~  $\boxtimes$  Union  $\boxtimes$   $\Rightarrow$  -wide  $\Leftarrow$  performance targets;

↓ 1070/2009 Art. 1.5 (adapted)  
 $\Rightarrow$  new

- ~~(e)~~ assessment of the  $\Rightarrow$  local  $\Leftarrow$  ~~national or functional airspace block~~ performance targets on the basis of the national or functional airspace block plan; ~~and~~
- ~~(f)~~ monitoring of the national or functional airspace block performance plans, including appropriate alert mechanisms;

↓ 1070/2009 Art. 1.5 (adapted)  
 $\Rightarrow$  new

- ~~(g)~~~~(d)~~ criteria  $\Rightarrow$  to impose sanctions for non-compliance  $\Leftarrow$  ~~assess whether the national or functional airspace block targets are consistent~~ with the ~~Community~~  $\boxtimes$  Union  $\boxtimes$  -wide  $\Rightarrow$  and associated local  $\Leftarrow$  performance targets during the reference period and to support alert mechanisms;

- ~~(h)~~~~(e)~~ general principles for the setting up by Member States of the incentive scheme;

~~(i)(f)~~ principles for the application of a transitional mechanism necessary for the adaptation to the functioning of the performance scheme not exceeding 12 months following the adoption of the ~~⇒ delegated act referred to in this paragraph~~ ~~⇐ implementing rules~~;

~~(j)(b)~~ the ~~⇒ appropriate~~ ~~⇐ reference periods and intervals for the assessment of the achievement of performance targets and the setting of new targets~~;

~~(k)(a)~~ the ~~content and~~ ~~⇒ necessary related~~ ~~⇐ timetables of the procedures referred to in paragraph 4~~;

↓ 1070/2009 Art. 1.5  
⇒ new

The Commission ~~may~~ ~~⇒ shall be empowered to adopt delegated acts in accordance with Article 26 in order to lay down detailed rules for the proper functioning of the performance scheme~~ ~~⇐ add to the list of procedures referred to~~ ~~⇒ in accordance with the points listed~~ ~~⇐ in this paragraph. These measures designed to amend non-essential elements of this Regulation, by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 5(4).~~

~~85.~~ The establishment of the performance scheme shall take into account that en route services, terminal services and network ~~⇒ services~~ ~~⇐ functions~~ are different and should be treated accordingly, if necessary also for performance-measuring purposes.

↓ 550/2004 (adapted)

## ~~CHAPTER III~~

### ~~CHARGING SCHEMES~~

↓ 1070/2009 Art. 2.8 (adapted)

#### ~~Article 1214~~

##### ~~General~~ ~~⊗~~ provisions for the charging scheme ~~⊗~~

In accordance with the requirements of Articles ~~13~~ ~~15~~ and ~~14~~ ~~16~~, the charging scheme for air navigation services shall contribute to greater transparency in the determination, imposition and enforcement of charges to airspace users and shall contribute to the cost efficiency of providing air navigation services and to efficiency of flights, while maintaining an optimum safety level. ~~This~~ ~~⊗~~ The ~~⊗~~ scheme shall also be consistent with Article 15 of the 1944 Chicago Convention on International Civil Aviation and with Eurocontrol's charging system for en-route charges.

*Article ~~13~~<sup>15</sup>*

**Principles ~~⊗~~ for the charging scheme ~~⊗~~**

1. The charging scheme shall be based on the account of costs for air navigation services incurred by service providers for the benefit of airspace users. The scheme shall allocate these costs among categories of users.

2. The ~~following~~ principles ~~⊗~~ set out in paragraphs 3 to 8 ~~⊗~~ shall be applied when establishing the cost-base for charges.

~~3(a)~~ ~~†~~The cost to be shared among airspace users shall be the determined cost of providing air navigation services, including appropriate amounts for interest on capital investment and depreciation of assets, as well as the costs of maintenance, operation, management and administration, ~~⇒ including the costs incurred by EAA for relevant authority tasks~~ ~~⇐~~. Determined costs shall be the costs determined by the Member State at national level or at the level of functional airspace blocks either at the beginning of the reference period for each calendar year of the reference period referred to in Article ~~11(5)~~ ~~11~~ of the framework Regulation, or during the reference period, following appropriate adjustments applying the alert mechanisms set out in Article 11 ~~11~~ of the framework Regulation.

~~4(b)~~ ~~†~~The costs to be taken into account in this context shall be those assessed in relation to the facilities and services provided for and implemented under the ICAO Regional Air Navigation Plan, European Region. They ~~⇒ shall~~ ~~⇐ may~~ also include costs incurred by national supervisory authorities and/or qualified entities, as well as other costs incurred by the relevant Member State and service provider in relation to the provision of air navigation services. They shall not include the costs of penalties imposed by Member States ~~⊗~~ referred ~~⊗~~ according to Article ~~339~~ of the framework Regulation nor the costs of any corrective measures ~~⇒ or sanctions~~ ~~⇐ imposed by Member States~~ ~~⊗~~ referred to in ~~⊗~~ according to Article ~~114~~ ~~⊗~~ (5) ~~⊗~~ of the framework Regulation.

~~5(e)~~ ~~†~~In respect of the functional airspace blocks and as part of their respective framework agreements, Member States shall make reasonable efforts to agree on common principles for charging policy.

~~6(d)~~ ~~†~~The cost of different air navigation services shall be identified separately, as provided for in Article ~~214~~ ~~212~~(3).

~~7(e)~~ ~~†~~Cross-subsidy shall not be allowed between en-route services and terminal services. Costs that pertain to both terminal services and en-route services shall be allocated in a proportional way between en-route services and terminal services on the basis of a transparent methodology. Cross-subsidy shall be allowed between different air ~~⇒ traffic~~ ~~⇐ navigation~~ services in either one of those two categories only when justified for objective reasons, subject to clear identification. ~~⇒ Cross-subsidy shall not be allowed between air traffic services and support services.~~ ~~⇐~~

~~8(4)~~ ~~¶~~ Transparency of the cost-base for charges shall be guaranteed. Implementing rules for the provision of information by the service providers shall be adopted in order to permit reviews of the provider's forecasts, actual costs and revenues. Information shall be regularly exchanged between the national supervisory authorities, service providers, airspace users, the Commission and Eurocontrol.

93. Member States shall comply with the following principles when setting charges in accordance with paragraphs ~~3~~ to 8 ~~2~~:

(a) charges shall be set for the availability of air navigation services under non-discriminatory conditions; ~~When imposing charges on different airspace users for the use of the same service, no distinction shall be made in relation to the nationality or category of the user;~~

(b) exemption of certain users, especially light aircraft and State aircraft, may be permitted, provided that the cost of such exemption is not passed on to other users;

(c) charges shall be set per calendar year on the basis of the determined costs, ~~or may be set under conditions established by Member States for determining the maximum level of the unit rate or of the revenue for each year over a period not exceeding five years;~~

(d) air navigation services may produce sufficient revenues to provide for a reasonable return on assets to contribute towards necessary capital improvements;

(e) charges shall reflect the cost of air navigation services and facilities made available to airspace users, ~~⇒ including costs incurred by EAA for relevant authority tasks, ⇐ taking into account the relative productive capacities of the different aircraft types concerned;~~

(f) charges shall encourage the safe, efficient, effective and sustainable provision of air navigation services with a view to achieving a high level of safety and cost-efficiency and meeting the performance targets and they shall stimulate integrated service provision, whilst reducing the environmental impact of aviation. ~~To that end,~~ ~~⇒~~ For the purposes of point (f) ~~⇐~~ and in relation to the national or functional airspace block performance plans, national supervisory authorities may set up mechanisms, including incentives consisting of financial advantages and disadvantages, to encourage air navigation service providers and/or airspace users to support improvements in the provision of air navigation services such as increased capacity, reduced delays and sustainable development, while maintaining an optimum safety level.

104. The Commission shall adopt ~~⇒~~ measures setting out the details of the procedure to be followed for the application of paragraphs 1 to 9. ~~⇐~~ ~~⇒~~ Those ~~⇐~~ detailed implementing rules ~~⇐~~ acts shall be adopted ~~⇐~~ for this Article in accordance with the ~~⇒~~ examination ~~⇐~~ regulatory procedure referred to in Article 27 ~~5~~(3) of the framework Regulation.

*Article ~~14~~<sup>16</sup>*

**Review of compliance** ☒ with Articles 12 and 13 ☒

1. The Commission shall provide for the ongoing review of compliance with the principles and rules referred to in Articles ~~12~~<sup>14</sup> and ~~13~~<sup>15</sup>, acting in cooperation with the Member States. The Commission shall endeavour to establish the necessary mechanisms for making use of Eurocontrol expertise and shall share the results of the review with the Member States, Eurocontrol and the airspace users' representatives.

2. At the request of one or more Member States ~~that consider that the principles and rules referred to in Articles 14 and 15 have not been properly applied,~~ or on its own initiative, the Commission shall ~~carry out an investigation into any allegation of non-compliance or non-application of the principles and/or rules concerned~~ ⇒ examine specific measures adopted by national authorities in relation to the application of Articles 12 and 13, concerning the determination of costs and charges ⇐. Without prejudice to Article ~~32~~<sup>34</sup>(1), the Commission shall share the results of the investigation with the Member States, Eurocontrol and the airspace users' representatives. Within two months of receipt of a request, after having heard the Member State concerned, ☒ the Commission shall decide whether Articles 12 and 13 have been complied with and the measure may thus continue to be applied. Those implementing acts shall be adopted ☒ ~~and after consulting the Single Sky Committee~~ in accordance with the advisory procedure referred to in Article ~~27~~<sup>29</sup>(2) ~~of the framework Regulation, the Commission shall take a decision on the application of Articles 14 and 15 of this Regulation and as to whether the practice concerned may continue.~~

~~3. The Commission shall address its decision to the Member States and inform the service provider thereof, in so far as it is legally concerned. Any Member State may refer the Commission's decision to the Council within one month. The Council, acting by a qualified majority, may take a different decision within a period of one month.~~

*Article ~~15~~<sup>15a</sup>*

**Common projects**

1. ~~Common projects may assist the successful~~ implementation of the ATM Master Plan ☒ may be supported by common projects ☒ . ~~Such~~ ☒ These ☒ projects shall support the objectives of this Regulation to improve the performance of the European aviation system in key areas such as capacity, flight and cost efficiency as well as environmental sustainability, within the overriding safety objectives. ⇒ The common projects shall aim to deploy in a timely, coordinated and synchronised manner ATM functionalities to achieve the essential operational changes identified in the ATM Master Plan ⇐ .

2. The Commission may ⇒ adopt measures establishing the governance of common projects and identifying incentives for their deployment. Those implementing acts shall be adopted ⇐ in accordance with the regulatory ⇒ examination ⇐ procedure referred to in Article 275(3) of the framework Regulation. ⊗ These measures ⊗ develop guidance material concerning the way in which such projects can support the implementation of the ATM Master Plan. Such guidance material shall not prejudice mechanisms for the deployment of such ⊗ the ⊗ projects concerning functional airspace blocks as agreed upon by the parties of those blocks.

3. The Commission may ⇒ adopt common projects for network-related functions which are of particular importance for the improvement of the overall performance of air traffic management and air navigation services in Europe identifying ATM functionalities that are mature for deployment, together with the timetable and geographical scope of the deployment. Those implementing acts shall be adopted ⇐ also decide, in accordance with the ⇒ examination ⇐ regulatory procedure referred to in Article 275(3) of the framework Regulation, to set up common projects for network-related functions which are of particular importance for the improvement of the overall performance of air traffic management and air navigation services in Europe. Such ⊗ The ⊗ common projects may be considered eligible for Community ⊗ Union ⊗ funding within the multiannual financial framework. To this end, and without prejudice to Member States' competence to decide on the use of their financial resources, the Commission shall carry out an independent cost-benefit analysis and appropriate consultations with Member States and with relevant stakeholders in accordance with Article 2810 of the framework Regulation, exploring all appropriate means for financing the deployment thereof. The eligible costs of deployment of common projects shall be recovered in accordance with the principles of transparency and non-discrimination.

↓ 1070/2009 Art. 2.5 (adapted)  
⇒ new

#### *Article 169a*

### **Functional airspace blocks**

1. ~~By 4 December 2012~~, Member States shall take all necessary measures in order to ensure the ⊗ establishment and ⊗ implementation of functional airspace blocks ⇒ based on integrated provision of air traffic services ⇐ with a view to achieving the required capacity and efficiency of the air traffic management network within the ~~Single European Sky~~ and maintaining a high level of safety and contributing to the overall performance of the air transport system and reduced environmental impact.

↓ new

2. The functional airspace blocks shall, wherever possible, be set-up based on co-operative industrial partnerships between air navigation service providers, in particular relating to the provision of support services in accordance with Article 10. The industrial partnerships may support one or more functional airspace block, or part thereof to maximise performance.



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↓ 1070/2009 Art. 2.5 (adapted)  
⇒ new

3. Member States ⇒ , as well as air traffic service providers ⇐ shall cooperate to the fullest extent possible with each other, ~~in particular Member States establishing neighbouring functional airspace blocks,~~ in order to ensure compliance with this ⊗ Article ⊗ provision. Where relevant, cooperation may also include ⇒ air traffic service providers from ⇐ third countries taking part in functional airspace blocks.

24. Functional airspace blocks shall, in particular:

(a) be supported by a safety case;

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↓ new

(b) be designed to seek maximum synergies from industrial partnerships in order to meet and where possible exceed the performance targets set in accordance with Article 11;

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↓ 1070/2009 Art. 2.5 (adapted)

~~(bc)~~ enable optimum use of airspace, taking into account air traffic flows;

~~(ed)~~ ensure consistency with the European route network established in accordance with Article 17 ~~6 of the airspace Regulation;~~

~~(de)~~ be justified by their overall added value, including optimal use of technical and human resources, on the basis of cost-benefit analyses;

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↓ 1070/2009 Art. 2.5  
⇒ new

~~(ef)~~ ⇒ where applicable, ⇐ ensure a smooth and flexible transfer of responsibility for air traffic control between air traffic service units;

~~(fg)~~ ensure compatibility between the different airspace configurations, ~~optimising, inter alia, the current flight information regions;~~

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↓ 1070/2009 Art. 2.5 (adapted)

~~(gh)~~ comply with conditions stemming from regional agreements concluded within the ICAO;

~~(hi)~~ respect regional agreements in existence on the date of entry into force of this Regulation, in particular those involving European third countries; ~~and~~

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↓ 1070/2009 Art. 2.5

~~(i)~~ ~~facilitate consistency with Community-wide performance targets.~~

↓ new

The requirements of paragraphs 4(c), (d) and (g) shall be met in accordance with the optimisation of airspace design carried out by the Network Manager as specified in Article 17.

5. The requirements set out in this Article may be met through participation of air navigation service providers in one or more functional airspace block.

↓ 1070/2009 Art. 2.5 (adapted)  
⇒ new

~~36.~~ A functional airspace block ⇒ that extend across the airspace under the responsibility of more than one Member State ⇐ shall ~~only~~ be established by ⇒ joint designation ⇐ ~~mutual agreement~~ between all the Member States ~~and~~ ☒ , as well as ☒ , where appropriate, third countries ~~who~~ ☒ that ☒ have responsibility for any part of the airspace included in the functional airspace block ⇒ The joint designation by which the functional airspace block is established shall contain the necessary provisions concerning the manner in which the block can be modified and the manner in which a Member State or, where appropriate, a third country, can withdraw from the block, including transitional arrangements ⇐.

⇒ 7. Member States shall notify the establishment of functional airspace blocks to the Commission ⇐ Before notifying the Commission of the establishment of a functional airspace block, the Member State(s) concerned shall provide the Commission, the other Member States and other interested parties with adequate information and give them an opportunity to submit their observations.

~~4. Where a functional airspace block relates to airspace that is wholly or partly under the responsibility of two or more Member States, the agreement by which the functional airspace block is established shall contain the necessary provisions concerning the way in which the block can be modified and the way in which a Member State can withdraw from the block, including transitional arrangements.~~

~~58.~~ Where difficulties arise between two or more Member States with regard to a cross-border functional airspace block that concerns airspace under their responsibility, the Member States concerned may jointly bring the matter to the Single Sky Committee for an opinion. The opinion shall be addressed to the Member States concerned. Without prejudice to paragraph ~~63~~, the Member States shall take that opinion into account in order to find a solution.

~~69.~~ After having received the notifications by Member States ~~of the agreements and declarations~~ referred to in paragraphs ~~63~~ and ⇒ 7 ⇐ ~~4~~ the Commission shall assess the fulfilment by each functional airspace block of the requirements set out in paragraph ~~42~~ and present the results to the ⇒ Member States ⇐ ~~Single Sky Committee~~ for discussion. If the Commission finds that one or more functional airspace blocks do not fulfil the requirements it shall engage in a dialogue with the Member States concerned with the aim of reaching a consensus on the measures necessary to rectify the situation.

~~7. Without prejudice to paragraph 6, the agreements and declarations referred to in paragraphs 3 and shall be notified to the Commission. for publication in the Official Journal of the~~

~~European Union. Such publication shall specify the date of entry into force of the relevant decision.~~

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↓ 1070/2009 Art. 2.5 (adapted)  
⇒ new

~~§10. ⇒ The Commission may adopt detailed measures concerning the joint designation of the air traffic service provider(s) referred to in paragraph 6, specifying the modalities for the selection of the service provider(s), the period of designation, supervision arrangements, the availability of services to be provided and liability arrangements. ⇐ Guidance material for the establishment and modification of functional airspace blocks shall be developed by 4 December 2010 ⇒ Those implementing acts shall be adopted ⇐ in accordance with the advisory ⇒ examination ⇐ procedure referred to in Article 275(32) of the framework Regulation.~~

~~911. † The Commission ⇒ may ⇐ shall, by 4 December 2011 and ☒ adopt measures regarding the information to be provided by the Member State(s) referred to in paragraph 6. ☒☒ Those implementing acts shall be adopted ☒ in accordance with the examination regulatory procedure referred to in Article 275(3) of the framework Regulation, adopt implementing rules regarding the information to be provided by the Member State(s) concerned before establishing and modifying a functional airspace block in accordance with paragraph 3 of this Article.~~

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↓ 1070/2009 Art. 2.5

#### ~~Article 9b~~

#### ~~Functional airspace blocks system coordinator~~

~~1. In order to facilitate the establishment of the functional airspace blocks, the Commission may designate a natural person as functional airspace blocks system coordinator (the Coordinator). The Commission shall act in accordance with the regulatory procedure referred to in Article 5(3) of the framework Regulation.~~

~~2. Without prejudice to Article 9a(5) the Coordinator shall facilitate at the request of all Member States concerned and, where appropriate, third countries taking part in the same functional airspace block, overcoming of difficulties in their negotiation process in order to speed up the establishment of functional airspace blocks. The Coordinator shall act on the basis of a mandate from all Member States concerned and, where appropriate, third countries taking part in the same functional airspace block.~~

~~3. The Coordinator shall act impartially in particular with regard to Member States, third countries, the Commission and the stakeholders.~~

~~4. The Coordinator shall not disclose any information obtained whilst performing his function except where authorised to do so by the Member State(s) and, where appropriate, third countries concerned.~~

~~5. The Coordinator shall report to the Commission, to the Single Sky Committee and to the European Parliament every three months after his designation. The report shall include a summary of negotiations and their results.~~

~~6. The remit of the Coordinator shall expire when the last functional airspace block agreement is signed but no later than 4 December 2012.~~

↓ 1070/2009 Art. 3.6  
⇒ new

## *Article ~~176~~*

### **Network management and design**

1. The air traffic management (ATM) network ~~functions~~ ⇒ services ⇐ shall allow optimum use of airspace and ensure that airspace users can operate preferred trajectories, while allowing maximum access to airspace and air navigation services. These network ~~functions~~ ⇒ services ⇐ shall be aimed at supporting initiatives at national level and at the level of functional airspace blocks and shall be executed in a manner which respects the separation of regulatory and operational tasks.

2. In order to achieve the objectives referred to in paragraph 1 and without prejudice to the responsibilities of the Member States with regard to national routes and airspace structures, the Commission shall ensure that the following ~~functions~~ ⇒ services ⇐ are carried out ⇒ under the responsibility of a Network Manager ⇐ :

- (a) design of the European route network;
- (b) coordination of scarce resources within aviation frequency bands used by general air traffic, in particular radio frequencies as well as coordination of radar transponder codes~~;~~

↓ new

- (c) central function for air traffic flow management;
- (d) provision of an aeronautical information portal in accordance with Article 23;
- (e) optimisation of airspace design in co-operation with the air navigation service providers and functional airspace blocks referred to in Article 16;
- (f) central function for coordination of aviation crisis.

↓ 1070/2009 Art. 3.6  
⇒ new

The ~~functions~~ ⇒ services ⇐ listed in ~~the first~~ this subparagraph shall not involve the adoption of binding measures of a general scope or the exercise of political discretion. They shall take into account proposals established at national level and at the level of functional airspace blocks. They shall be performed in coordination with

military authorities in accordance with agreed procedures concerning the flexible use of airspace.

↓ 1070/2009 Art. 3.6 (adapted)  
⇒ new

The Commission may, ~~after consultation of the Single Sky Committee~~ and in conformity with the implementing rules referred to in paragraph 4, ~~entrust to~~ ☒ appoint ☒ Eurocontrol, or another impartial and competent body, ⇒ to carry out ☐ the tasks ~~necessary for the execution of the functions listed in the first subparagraph~~ ⇒ of the Network Manager ☐. These tasks shall be executed in an impartial and cost-effective manner and performed on behalf ☒ of ☒ ~~on~~ Member States and stakeholders. They shall be subject to appropriate governance, which recognises the separate accountabilities for service provision and regulation, taking into consideration the needs of the whole ATM network and with the full involvement of the airspace users and air navigation service providers. ⇒ By 1 January 2020, the Commission shall designate the Network Manager as a self-standing service provider where possible set up as an industrial partnership. ☐

↓ 1070/2009 Art. 3.6  
⇒ new

3. The Commission ~~may~~ ⇒ shall be empowered to adopt delegated acts in accordance with Article 26 to ☐ add to the list of the ~~functions~~ ⇒ services set out ☐ in paragraph 2 ⇒ in order to adapt it to technical and operational progress with regard to the provision of support services in a centralised manner ☐ ~~after proper consultation of industry stakeholders. Those measures, designed to amend non-essential elements of this Regulation by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 29(1)5(4) of the framework Regulation.~~

4. ⇒ The Commission shall adopt ☐ ~~Detailed rules for the implementation of the measures referred to in this Article, except for those referred to in paragraphs 6 to 9~~ 8, shall be adopted in accordance with the regulatory procedure referred to in Article 5(3) of the framework Regulation. Those implementing rules shall address in particular ⇒ concerning ☐ :

- (a) the coordination and harmonisation of processes and procedures to enhance the efficiency of aeronautical frequency management including the development of principles and criteria;
- (b) the central function to coordinate the early identification and resolution of frequency needs in the bands allocated to European general air traffic to support the design and operation of European aviation network;
- (c) additional network ~~functions~~ ⇒ services ☐ as defined in the ATM Master Plan;
- (d) detailed arrangements for cooperative decision-making between the Member States, the air navigation service providers and the network management function for the tasks referred to in paragraph 2;

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↓ new

(e) detailed arrangements for the governance of the Network Manager involving all operational stakeholders concerned;

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↓ 1070/2009 Art. 3.6  
⇒ new

(fe) arrangements for consultation of the relevant stakeholders in the decision-making process both at national and European levels; and

(gf) within the radio spectrum allocated to general air traffic by the International Telecommunication Union, a division of tasks and responsibilities between the network management function and national frequency managers, ensuring that the national frequency management functions ⇒ services ⇐ continue to perform those frequency assignments that have no impact on the network. For those cases which do have an impact on the network, the national frequency managers shall cooperate with those responsible for the network management function to optimise the use of frequencies.

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↓ new

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 27(3).

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↓ 1070/2009 Art. 3.6 (adapted)  
⇒ new

5. Aspects of airspace design other than those referred to in paragraphs 2 ⇒ and 4 (c) ⇐ shall be dealt with at national level or at the level of functional airspace blocks. This design process shall take into account traffic demands and complexity, national or functional airspace block performance plans and shall include full consultation of relevant airspace users or relevant groups representing airspace users and military authorities as appropriate.

~~6. Member States shall entrust Eurocontrol or another impartial and competent body with the performance of air traffic flow management, subject to appropriate oversight arrangements.~~

~~7. Implementing rules for air traffic flow management, including the necessary oversight arrangements, shall be developed in accordance with the advisory procedure referred to in Article 5(2) of the framework Regulation and adopted in accordance with the regulatory procedure referred to in Article 5(3) of the framework Regulation, with a view to optimising available capacity in the use of airspace and enhancing air traffic flow management processes. These rules shall be based on transparency and efficiency, ensuring that capacity is provided in a flexible and timely manner, consistent with the recommendations of the ICAO Regional Air Navigation Plan, European Region.~~

↓ 1070/2009 Art. 3.6

~~8. The implementing rules for air traffic flow management shall support operational decisions by air navigation service providers, airport operators and airspace users and shall cover the following areas:~~

~~(a) flight planning;~~

~~(b) use of available airspace capacity during all phases of flight, including slot assignment; and~~

~~(c) use of routings by general air traffic, including:~~

~~the creation of a single publication for route and traffic orientation,~~

~~options for diversion of general air traffic from congested areas, and~~

~~priority rules regarding access to airspace for general air traffic, particularly during periods of congestion and crisis.~~

~~9. When developing and adopting the implementing rules the Commission shall, as appropriate and without prejudice to safety, take into account consistency between flight plans and airport slots and the necessary coordination with adjacent regions.~~

↓ 550/2004 (adapted)

⇒ new

## *Article ~~1810~~*

### **Relations between service providers**

1. Air navigation service providers may avail themselves of the services of other service providers that have been certified ⇒ or declared ⇐ in the ~~Community~~ ☒ Union ☒.

2. Air navigation service providers shall formalise their working relationships by means of written agreements or equivalent legal arrangements, setting out the specific duties and functions assumed by each provider and allowing for the exchange of operational data between all service providers in so far as general air traffic is concerned. Those arrangements shall be notified to the national supervisory authority ~~or authorities~~ concerned.

3. In cases involving the provision of air traffic services, the approval of the Member States concerned shall be required. ~~In cases involving the provision of meteorological services, the approval of the Member States concerned shall be required if they have designated a provider on an exclusive basis in accordance with Article 9(1).~~

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↓ new

*Article 19*

**Relations with stakeholders**

The air navigation service providers shall establish consultation mechanisms to consult the relevant groups of airspace users and aerodrome operators on all major issues related to services provided, or relevant changes to airspace configurations. The airspace users shall also be involved in the process of approving strategic investment plans. The Commission shall adopt measures detailing the modalities of the consultation and of the involvement of airspace users in approving investment plans. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 27 (3).

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↓ 1070/2009 Art. 2.6

*Article ~~20~~*

**Relations with military authorities**

Member States shall, within the context of the common transport policy, take the necessary steps to ensure that written agreements between the competent civil and military authorities or equivalent legal arrangements are established or renewed in respect of the management of specific airspace blocks.

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↓ 550/2004 (adapted)

*Article ~~21~~*

**Transparency of accounts**

1. Air navigation service providers, whatever their system of ownership or legal form, shall draw up, submit to audit and publish their financial accounts. These accounts shall comply with the international accounting standards adopted by the ~~Community~~  Union . Where, owing to the legal status of the service provider, full compliance with the international accounting standards is not possible, the provider shall endeavour to achieve such compliance to the maximum possible extent.

2. In all cases, air navigation service providers shall publish an annual report and regularly undergo an independent audit.

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↓ 1070/2009 Art. 2.7

3. When providing a bundle of services, air navigation service providers shall identify and disclose the costs and income deriving from air navigation services, broken down in accordance with the charging scheme for air navigation services referred to in Article ~~12~~ and, where appropriate, shall keep consolidated accounts for other, non-air-navigation



services, as they would be required to do if the services in question were provided by separate undertakings.

↓ 550/2004 (adapted)  
⇒ new

4. Member States shall designate the competent authorities that shall have a right of access to the accounts of service providers that provide services within the airspace under their responsibility.

5. Member States may apply the transitional provisions of Article 9 of Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards<sup>49</sup> to air navigation service providers that fall within the scope of that regulation.

### *Article ~~22~~<sup>13</sup>*

#### **Access to and protection of data**

1. In so far as general air traffic is concerned, relevant operational data shall be exchanged in real-time between all air navigation service providers, airspace users and airports, to facilitate their operational needs. The data shall be used only for operational purposes.

2. Access to relevant operational data shall be granted to appropriate authorities, certified ⇒ or declared ⇐ air navigation service providers, airspace users and airports on a non-discriminatory basis.

3. Certified ⇒ or declared ⇐ service providers, airspace users and airports shall establish standard conditions of access to their relevant operational data other than those referred to in paragraph 1. National supervisory authorities shall approve such standard conditions. ⇒ The Commission may lay down ⇐ ~~Detailed rules~~ ⇒ measures concerning the procedures to be followed for data exchange and the type of data concerned in relation to these conditions of access and their approval. ⇐ ~~relating to such conditions shall be established, where appropriate,~~ ⇒ Those implementing acts shall be adopted ⇐ in accordance with the ⇒ examination ⇐ procedure referred to in Article ~~275~~(3) of the framework Regulation.

<sup>49</sup> OJ L 243, 11.9.2002, p. 1.

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↓ 551/2004 (adapted)

## CHAPTER ~~II~~ IV

### AIRSPACE ~~ARCHITECTURE~~

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↓ 1070/2009 Art. 3.2

#### ~~Article 3~~

#### ~~European Upper Flight Information Region (EUIR)~~

~~1. The Community and its Member States shall aim at the establishment and recognition by the ICAO of a single EUIR. To that effect, for matters which fall within the competence of the Community, the Commission shall submit a recommendation to the Council in accordance with Article 300 of the Treaty at the latest by 4 December 2011.~~

~~2. The EUIR shall be designed to encompass the airspace falling under the responsibility of the Member States in accordance with Article 1(3) and may also include airspace of European third countries.~~

~~3. The establishment of the EUIR shall be without prejudice to the responsibility of Member States for the designation of air traffic service providers for the airspace under their responsibility in accordance with Article 8(1) of the service provision Regulation.~~

~~4. Member States shall retain their responsibilities towards the ICAO within the geographical limits of the upper flight information regions and flight information regions entrusted to them by the ICAO on the date of entry into force of this Regulation.~~

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↓ 1070/2009 Art. 3.3 (adapted)  
⇒ new

#### ~~Article 23~~<sup>a</sup>

#### Electronic aeronautical information

1. Without prejudice to the publication by Member States of aeronautical information and in a manner consistent with that publication, the Commission, working in cooperation with ~~Eurocontrol~~ ⇒ the Network Manager ⇐, shall ensure the availability of electronic aeronautical information of high quality, presented in a harmonised way and serving the requirements of all relevant users in terms of data quality and timeliness.

2. For the purpose of paragraph 1, the Commission shall:

(a) ensure the development of a ~~Community~~ ⇔ Union ⇔-wide aeronautical information infrastructure in the form of an electronic integrated briefing portal with unrestricted access to interested stakeholders. That infrastructure shall integrate

access to and provision of required data elements such as, but not limited to aeronautical information, air traffic services reporting office (ARO) information, meteorological information and flow management information.

~~(b) support the modernisation and harmonisation of the provision of aeronautical information in its broadest sense in close cooperation with Eurocontrol and the ICAO.~~

3. The Commission shall adopt ~~detailed implementing rules~~ ⇨ measures ⇨ for ⇨ the establishment and implementation of an electronic integrated briefing portal. Those implementing acts shall be adopted ⇨ ~~this Article~~ in accordance with the ⇨ examination ⇨ regulatory procedure referred to in Article ~~275(3)~~ of the framework Regulation.

↓ 1070/2009 Art. 3.4

#### ~~Article 4~~

#### ~~Rules of the air and airspace classification~~

~~The Commission shall, in accordance with the regulatory procedure referred to in Article 5(3) of the framework Regulation, adopt implementing rules in order to:~~

~~(a) adopt appropriate provisions on rules of the air based upon ICAO standards and recommended practices;~~

~~(b) harmonise the application of the ICAO airspace classification, with appropriate adaptation, in order to ensure the seamless provision of safe and efficient air traffic services within the single European sky.~~

↓ 551/2004 (adapted)

### ~~CHAPTER III~~

### ~~FLEXIBLE USE OF AIRSPACE IN THE SINGLE EUROPEAN SKY~~

↓ 551/2004 (adapted)  
⇨ new

#### ~~Article 7~~

#### ~~Flexible use of airspace~~

~~1. Taking into account the organisation of military aspects under their responsibility, Member States shall ensure the uniform application within the single European sky of the concept of the flexible use of airspace as described by the ICAO and as developed by Eurocontrol, in order to facilitate airspace management and air traffic management in the context of the common transport policy.~~

~~2. Member States shall report annually to the Commission on the application, in the context of the common transport policy, of the concept of the flexible use of airspace in respect of the airspace under their responsibility.~~

~~3. Where, in particular following the reports submitted by Member States, it becomes necessary to reinforce and harmonise the application of the concept of the flexible use of airspace within the single European sky, implementing rules within the context of the common transport policy shall be adopted in accordance with the procedure under Article 8 of the framework Regulation.~~

#### ~~Article 8~~

##### ~~Temporary suspension~~

~~1. In cases where the application of Article 7 gives rise to significant operational difficulties, Member States may temporarily suspend such application on condition that they inform without delay the Commission and the other Member States thereof.~~

~~2. Following the introduction of a temporary suspension, adjustments to the rules adopted under Article 7(3) may be worked out for the airspace under the responsibility of the Member State(s) concerned, in accordance with the procedure under Article 8 of the framework Regulation.~~

↓ new

#### ~~Article 24~~

##### ~~Technological development and interoperability of air traffic management~~

~~1. The Commission shall adopt detailed rules concerning the promotion of the technological development and interoperability of air traffic management related to the development and deployment of the ATM Master Plan. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 27(3).~~

~~2. In respect of the rules referred to in paragraph 1, Article 17(2)(b) of Regulation (EC) No 216/2008 shall apply. Where appropriate, the Commission shall request EAA to include these rules in the annual work programme referred to in Article 56 of that Regulation.~~

↓ 552/2004  
⇒ new

~~3. Implementing rules for interoperability shall in particular:~~

~~(a) determine any specific requirements that complement or refine the essential requirements, in particular in terms of safety, seamless operation and performance; and/or~~

~~(b) describe, where appropriate, any specific requirements that complement or refine the essential requirements, in particular regarding the coordinated~~

~~introduction of new, agreed and validated concepts of operation or technologies; and/or~~

~~(c) determine the constituents when dealing with systems; and/or~~

~~(d) describe the specific conformity assessment procedures involving, where appropriate, notified bodies as referred to in Article 8, based on the modules defined in Decision 93/465/EEC to be used to assess either the conformity or the suitability for use of constituents as well as the verification of systems; and/or~~

~~(e) specify the conditions of implementation including, where appropriate, the date by which all relevant stakeholders are required to comply with them.~~

↓ 552/2004

## ~~CHAPTER II V~~

### ~~ESSENTIAL REQUIREMENTS, IMPLEMENTING RULES FOR INTEROPERABILITY AND COMMUNITY SPECIFICATIONS~~

#### ~~Article 2~~

##### ~~Essential requirements~~

~~The EATMN, its systems and their constituents and associated procedures shall meet essential requirements. The essential requirements are set out in Annex II.~~

#### ~~Article 3~~

##### ~~Implementing rules for interoperability~~

~~1. Implementing rules for interoperability shall be drawn up whenever necessary to achieve in a coherent way the objectives of this Regulation.~~

~~2. Systems, constituents and associated procedures shall comply with the relevant implementing rules for interoperability throughout their lifecycle.~~

~~4. The preparation, adoption and review of implementing rules for interoperability shall take into account the estimated costs and benefits of technical solutions by means of which they may be complied with, with a view to defining the most viable solution, having due regard to the maintenance of an agreed high level of safety. An assessment of the costs and benefits of those solutions for all stakeholders concerned shall be attached to each draft implementing rule for interoperability.~~

~~5. Implementing rules for interoperability shall be established in accordance with the procedure under Article 8 of the framework Regulation.~~

## ~~Article 4~~

### ~~Community specifications~~

~~1. In pursuit of the objective of this Regulation, Community specifications may be established. Such specifications may be:~~

~~(a) European standards for systems or constituents, together with the relevant procedures, drawn up by the European standardisation bodies in cooperation with Eurocae, on a mandate from the Commission in accordance with Article 6(4) of Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations<sup>50</sup> and pursuant to the general guidelines on cooperation between the Commission and the standardisation bodies signed on 13 November 1984;~~

~~or~~

~~(b) specifications drawn up by Eurocontrol on matters of operational coordination between air navigation service providers, in response to a request from the Commission in accordance with the procedure referred to in Article 5(2) of the framework Regulation.~~

~~2. Compliance with the essential requirements and/or the implementing rules for interoperability shall be presumed for systems, together with the associated procedures, or constituents that meet the relevant Community specifications and whose reference numbers have been published in the *Official Journal of the European Union*.~~

~~3. The Commission shall publish the references to the European standards referred to in paragraph 1(a) in the *Official Journal of the European Union*.~~

~~4. The references to Eurocontrol specifications referred to in paragraph 1(b), shall be published by the Commission in the *Official Journal of the European Union* in accordance with the procedure referred to in Article 5(2) of the framework Regulation.~~

~~5. Where a Member State or the Commission considers that conformity with a published Community specification does not ensure compliance with the essential requirements and/or implementing rules for interoperability which the said Community specification is intended to cover, the procedure referred to in Article 5(2) of the framework Regulation shall apply.~~

~~6. In the case of shortcomings of published European standards, partial or total withdrawal of the standards concerned from the publications containing them, or amendments thereto, may be decided upon in accordance with the procedure referred to in Article 5(2) of the framework Regulation after consultation of the committee set up under Article 5 of Directive 98/34/EC.~~

~~7. In the case of shortcomings of published Eurocontrol specifications, partial or total withdrawal of the specifications concerned from the publications containing them, or~~

<sup>50</sup> ~~OJ L 204, 21.7.1998, p. 37. Directive as last amended by Directive 98/48/EC (OJ L 217, 5.8.1998, p. 18).~~

~~amendment thereof, may be decided upon in accordance with the procedure referred to in Article 5(2) of the framework Regulation.~~

## ~~CHAPTER III~~

### ~~VERIFICATION OF COMPLIANCE~~

#### ~~Article 5~~

##### ~~EC declaration of conformity or suitability for use of constituents~~

~~1. Constituents shall be accompanied by an EC declaration of conformity or suitability for use. The elements of this declaration are set out in Annex III.~~

~~2. The manufacturer, or its authorised representative established in the Community, shall ensure and declare, by means of the EC declaration of conformity or suitability for use, that he has applied the provisions laid down in the essential requirements and in the relevant implementing rules for interoperability.~~

~~3. Compliance with the essential requirements and the relevant implementing rules for interoperability shall be presumed in relation to those constituents that are accompanied by the EC declaration of conformity or suitability for use.~~

~~4. The relevant implementing rules for interoperability shall identify, where appropriate, the tasks pertaining to the assessment of conformity or suitability for use of constituents to be carried out by the notified bodies referred to in Article 8.~~

#### ~~Article 6~~

##### ~~EC declaration of verification of systems~~

~~1. Systems shall be subject to an EC verification by the air navigation service provider in accordance with the relevant implementing rules for interoperability, in order to ensure that they meet the essential requirements of this Regulation and the implementing rules for interoperability, when integrated into the EATMN.~~

~~2. Before a system is put into service, the relevant air navigation service provider shall establish an EC declaration of verification, confirming compliance, and shall submit it to the national supervisory authority together with a technical file. The elements of this declaration and of the technical file are set out in Annex IV. The national supervisory authority may require any additional information necessary to supervise such compliance.~~

~~3. The relevant implementing rules for interoperability shall identify, where appropriate, the tasks pertaining to the verification of systems to be carried out by the notified bodies as referred to in Article 8.~~

~~4. The EC declaration of verification shall be without prejudice to any assessments that the national supervisory authority may need to carry out on grounds other than interoperability.~~

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↓ 1070/2009 Art. 4.1

~~Article 6a~~

~~Alternative verification of compliance~~

~~A certificate issued in accordance with Regulation (EC) No 216/2008 of the European Parliament and of the Council of 20 February 2008 on common rules in the field of civil aviation and establishing a European Aviation Safety Agency<sup>51</sup>, where it applies to constituents or systems, shall be considered, for the purposes of Articles 5 and 6 of this Regulation, as an EC declaration of conformity or suitability for use, or as an EC declaration of verification, if it includes a demonstration of compliance with the essential requirements of this Regulation and the relevant implementing rules for interoperability.~~

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↓ 552/2004

~~Article 7~~

~~Safeguards~~

~~1. Where the national supervisory authority ascertains that:~~

~~(a) a constituent accompanied by an EC declaration of conformity or suitability for use, or~~

~~(b) a system accompanied by the EC declaration of verification,~~

~~does not comply with the essential requirements and/or relevant implementing rules for interoperability, it shall, with due regard to the need to ensure safety and continuity of operations, take all measures necessary to restrict the area of application of the constituent or the system concerned or to prohibit its use by the entities under the responsibility of the authority.~~

~~2. The Member State concerned shall immediately inform the Commission of any such measures, indicating its reasons and, in particular, whether in its opinion non-compliance with the essential requirements is due to:~~

~~(a) failure to meet the essential requirements;~~

~~(b) incorrect application of the implementing rules for interoperability and/or Community specifications;~~

~~(c) shortcomings in the implementing rules for interoperability and/or Community specifications.~~

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<sup>51</sup> ~~OJL 79, 19.3.2008, p. 1.~~



~~3. As soon as possible, the Commission shall consult the parties concerned. After such consultation, the Commission shall inform the Member State of its findings and of its opinion as to whether the measures taken by the national supervisory authority are justified.~~

~~4. Where the Commission establishes that the measures taken by the national supervisory authority are not justified, it shall request the Member State concerned to ensure that they are withdrawn without delay. It shall forthwith so inform the manufacturer or its authorised representative established in the Community.~~

~~5. Where the Commission establishes that non-compliance with the essential requirements is due to incorrect application of the implementing rules for interoperability and/or the Community specifications, the Member State concerned shall take appropriate measures against the originator of the declaration of conformity or suitability for use or the EC declaration of verification and shall inform the Commission and the other Member States thereof.~~

~~6. Where the Commission establishes that non-compliance with the essential requirements is due to shortcomings in the Community specifications, the procedures referred to in Article 4(6) or (7) shall apply.~~

## CHAPTER ~~IV~~ V

### FINAL PROVISIONS

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↓ 1070/2009 Art. 2.11 (adapted)

*Article ~~25~~17*

Revision  Adaptation  of  the  Annexes

~~Measures, designed to amend non-essential elements of the Annexes in order to take into account technical or operational developments, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 5(4) of the framework Regulation.~~

~~On imperative grounds of urgency, the Commission may use the urgency procedure referred to in Article 5(5) of the framework Regulation.~~

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↓ new

The Commission shall be empowered to adopt delegated acts in accordance with Article 26 in order to supplement or amend the requirements for qualified entities listed in Annex I and the conditions to be attached to certificates to be awarded to air navigation service providers listed in Annex II in order to take account of experience gained by national supervisory authorities in applying these requirements and conditions or of the evolution of air traffic management system in terms of interoperability and integrated provision of air navigation services.

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↓ new

## Article 26

### Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The delegation of power referred to in Article 11(7), Article 17(3) and Article 25 shall be conferred on the Commission for an indeterminate period of time.
3. The delegation of power referred to in Article 11(7), Article 17(3) and Article 25 may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
5. A delegated act adopted pursuant to Article 11(7), Article 17(3) and Article 25 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of 2 months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by 2 months at the initiative of the European Parliament or the Council.

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↓ 549/2004  
⇒ new

## Article 27 ~~5~~

### Committee procedure

1. The Commission shall be assisted by the Single Sky Committee, hereinafter referred to as 'the Committee', ~~composed of two representatives of each Member State and chaired by a representative of the Commission. The Committee shall ensure an appropriate consideration of the interests of all categories of users.~~ ⇒ The Committee shall be a committee within the meaning of Regulation (EU) No 182/2011. ⇐
2. Where reference is made to this paragraph, Articles ~~3 and 7~~ ⇒ 4 ⇐ of ~~Decision 1999/468/EC~~ ⇒ Regulation (EU) No 182/2011 ⇐ shall apply, ~~having regard to the provisions of Article 8 thereof.~~
3. Where reference is made to this paragraph, Articles ~~5 and 7~~ of ~~Decision 1999/468/EC~~ ⇒ Regulation (EU) No 182/2011 ⇐ shall apply, ~~having regard to the provisions of Article 8 thereof.~~

~~The period referred to in Article 5(6) of Decision 1999/468/EC shall be set at one month.~~

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↓ 1070/2009 Art. 1.4

~~4. Where reference is made to this paragraph, Article 5a(1) to (4) and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.~~

~~5. Where reference is made to this paragraph, Article 5a(1), (2), (4),(6) and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.~~

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↓ 1070/2009 Art. 1.5 (adapted)  
⇒ new

### Article 2810

#### ⊗ Consultation of stakeholders by the Commission ⊗

~~12.~~ The Commission shall establish a consultation mechanism at ~~Community~~ ⊗ Union ⊗ level ⇒ to consult on matters related to the implementation of this Regulation where appropriate ⇐. The specific Sectoral Dialogue Committee set up under ⊗ Commission ⊗ Decision 98/500/EC shall be involved in the consultation.

~~3. Consultation of stakeholders shall cover, in particular, the development and introduction of new concepts and technologies in the EATMN.~~

2. The stakeholders may include:

- air navigation service providers,
  - airport operators,
  - relevant airspace users or relevant groups representing airspace users,
  - military authorities,
  - manufacturing industry, and,
  - professional staff representative bodies.
- 

↓ 1070/2009 Art. 1.5 (adapted)

### Article 296

#### **Industry consultation body**

Without prejudice to the role of the Committee and of Eurocontrol, the Commission shall establish an ‘industry consultation body’, to which air navigation service providers, associations of airspace users, airport operators, the manufacturing industry and professional staff representative bodies shall belong. The role of this body shall solely be to advise the Commission on the implementation of the ~~s~~Single European ~~s~~Sky.

*Article 30~~7~~*

**Relations with ~~European~~ third countries**

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↓ 1070/2009 Art. 1.5 (adapted)  
⇒ new

The ~~Community~~ ☒ Union ☒ and its Member States shall aim at and support the extension of the ~~Single European Sky~~.to countries which are not members of the European Union. To that end, they shall endeavour, either in the framework of agreements concluded with neighbouring third countries or in the context of ~~agreements on functional airspace blocks~~ ⇒ joint designations of functional airspace blocks or agreements on network functions ⇐ , to ~~extend the application~~ ⇒ further the objectives ⇐ of this Regulation, ~~and of the measures referred to in Article 3~~, to those countries.

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↓ 1070/2009 Art. 1.5 (adapted)  
⇒ new

*Article 31~~8~~*

☒ **Support by outside bodies** ⇐ ~~Implementing rules~~

1. ~~For the development of implementing rules~~ ‡The Commission may ⇒ request support from ⇐ ~~issue mandates to Eurocontrol or, where appropriate, to another~~ ⇒ an outside ⇐ body ⇒ for the fulfilment of its tasks under this Regulation ⇐ , ~~setting out the tasks to be performed and the timetable for this and taking into account the relevant deadlines laid down in this Regulation. The Commission shall act in accordance with the advisory procedure referred to in Article 5(2).~~

2. ~~When the Commission intends to issue a mandate in accordance with paragraph 1 it shall endeavour to make the best use of existing arrangements for the involvement and consultation of all interested parties, where these arrangements correspond to Commission practices on transparency and consultation procedures and do not conflict with its institutional obligations.~~

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↓ 1070/2009 Art. 2.1

~~Article 4~~

**Safety requirements**

~~The Commission shall, in accordance with the regulatory procedure referred to in Article 5(3) of the framework Regulation, adopt implementing rules incorporating the relevant provisions of the Eurocontrol safety regulatory requirements (ESARRs) and subsequent amendments to those requirements falling within the scope of this Regulation, where necessary with appropriate adaptations.~~

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↓ 550/2004 (adapted)

## ~~CHAPTER IV~~

### ~~FINAL PROVISIONS~~

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↓ 1070/2009 Art. 4.2

#### ~~Article 9~~

#### ~~Revision of Annexes~~

~~Measures, designed to amend non-essential elements of the Annexes, in order to take into account technical or operational developments, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 5(4) of the framework Regulation.~~

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↓ 1070/2009 Art. 2.11

#### ~~Article 3218~~

#### **Confidentiality**

1. Neither the national supervisory authorities, acting in accordance with their national legislation, nor the Commission shall disclose information of a confidential nature, in particular information about air navigation service providers, their business relations or their cost components.
  2. Paragraph 1 shall be without prejudice to the right of disclosure by national supervisory authorities or the Commission where this is essential for the fulfilment of their duties, in which case such disclosure shall be proportionate and shall have regard to the legitimate interests of air navigation service providers, airspace users, airports or other relevant stakeholders in the protection of their business secrets.
  3. Information and data provided pursuant to the charging scheme referred to in Article ~~1214~~ shall be publicly disclosed.
- 

↓ 1070/2009 Art. 1.5 (adapted)  
⇒ new

#### ~~Article 339~~

#### **Penalties**

~~The penalties that~~ Member States shall lay down  rules on penalties applicable to  ~~for~~ infringements of this Regulation, ~~and of the measures referred to in Article 3~~ in particular by airspace users and service providers , and shall take all measures necessary to ensure that

they are implemented. The penalties provided for ↵ shall be effective, proportionate and dissuasive.

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↓ 549/2004 (adapted)

#### *Article ~~34~~12*

#### ~~Supervision, monitoring~~ ☒ ~~Review~~ ☒ and methods of impact assessment

~~1. The supervision, monitoring and methods of impact assessment shall be based on the submission of annual reports by the Member States on implementation of the actions taken pursuant to this Regulation and to the measures referred to in Article 3.~~

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↓ 1070/2009 Art. 1.6(a) (adapted)  
⇒ new

~~12. The Commission shall periodically review the application of this Regulation and of the measures referred to in Article 3, and shall firstly report to the European Parliament and to the Council by 4 June 2011, and at the end of each reference period referred to in Article 11(~~5~~3)(d) thereafter. When justified for this purpose, the Commission may request from the Member States information additional to the information contained in the reports submitted by them in accordance with paragraph 1 of this Article~~ ⇒ relevant to the application of this Regulation ↵.

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↓ 549/2004

~~3. For the purposes of drafting the reports referred to in paragraph 2, the Commission shall request the opinion of the Committee.~~

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↓ 1070/2009 Art. 1.6(b)

~~24. The reports shall contain an evaluation of the results achieved by the actions taken pursuant to this Regulation including appropriate information about developments in the sector, in particular concerning economic, social, environmental, employment and technological aspects, as well as about quality of service, in the light of the original objectives and with a view to future needs.~~

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↓ 1070/2009 Art. 2.12 (adapted)

#### *Article ~~18a~~*

#### ~~Review~~

~~The Commission shall submit a study to the European Parliament and to the Council no later than 4 December 2012 evaluating the legal, safety, industrial, economic and social impacts of the application of market principles to the provision of communication, navigation, surveillance and aeronautical information services, compared to existing or alternative~~

~~organisational principles and taking into account developments in the functional airspace blocks and in available technology.~~

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↓ 551/2004 (adapted)

## ~~CHAPTER IV~~

### ~~FINAL PROVISIONS~~

#### ~~Article 10~~

##### ~~Review~~

~~In the context of the periodical review referred to in Article 12(2) of the framework Regulation, the Commission shall finalise a prospective study on the conditions for future application of the concepts referred to in Articles 3, 5 and 6 to lower airspace.~~

~~On the basis of the study's conclusions and in the light of the progress achieved, the Commission shall submit at the latest by 31 December 2006 a report to the European Parliament and to the Council accompanied, if appropriate, by a proposal to extend the application of these concepts to lower airspace, or to determine any other steps. In the event of such an extension being envisaged, the relevant decisions should preferably be taken before 31 December 2009.~~

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↓ 549/2004 (adapted)

#### ~~Article 35~~13~~~~

##### ~~Safeguards~~

This Regulation shall not prevent the application of measures by a Member State to the extent ~~to which~~  that  these are needed to safeguard essential security or defence policy interests. Such measures are in particular those which are imperative:

- (a) for the surveillance of airspace that is under its responsibility in accordance with ICAO Regional Air Navigation agreements, including the capability to detect, identify and evaluate all aircraft using such airspace, with a view to seeking to safeguard safety of flights and to take action to ensure security and defence needs,
- (b) in the event of serious internal disturbances affecting the maintenance of law and order,
- (c) in the event of war or serious international tension constituting a threat of war,
- (d) for the fulfilment of a Member State's international obligations in relation to the maintenance of peace and international security,

- (e) in order to conduct military operations and training, including the necessary possibilities for exercises.

↓ 1070/2009 Art. 1.7 (adapted)  
⇒ new

~~Article 36~~<sup>3a</sup>

European ⇒ Union Agency for ⇐ Aviation Safety Agency ⇒ (EAA) ⇐

When implementing this Regulation and Regulations (EC) No 550/2004, (EC) No 551/2004, (EC) No 552/2004 and Regulation (EC) No 216/2008 of the European Parliament and of the Council of 20 February 2008 on common rules in the field of civil aviation and establishing a European Aviation Safety Agency<sup>52</sup>; Member States and the Commission, in accordance with their respective roles as provided for by this Regulation, shall coordinate as appropriate with ⇒ EAA ⇐ the European Aviation Safety Agency to ensure that all safety aspects are properly addressed.

↓ 552/2004 (adapted)

~~Article 10~~

~~Transitional arrangements~~

- ~~1. Starting from 20 October 2005, the essential requirements shall apply to the putting into service of systems and constituents of the EATMN, if not otherwise specified by the relevant implementing rules for interoperability.~~
- ~~2. Compliance with the essential requirements shall be required for all systems and constituents of the EATMN currently in operation by 20 April 2011, if not otherwise specified by the relevant implementing rules for interoperability.~~

↓ 1070/2009 Art. 4.3 (adapted)

~~2a. For the purposes of paragraph 2 of this Article, Member States may declare systems and constituents of the EATMN as compliant with the essential requirements and exempt from the provisions of Articles 5 and 6.~~

↓ 552/2004 (adapted)

- ~~3. Where systems of the EATMN have been ordered or binding contracts to that effect have been signed~~
  - ~~— before the date of entry into force of this Regulation, or, where appropriate,~~

<sup>52</sup> OJL 79, 19.3.2008, p. 1.



- ~~before the date of entry into force of one or more relevant implementing rules for interoperability;~~

~~so that compliance with the essential requirements and/or the relevant implementing rules for interoperability cannot be guaranteed within the time limit mentioned in paragraph 1, the Member State concerned shall communicate to the Commission detailed information on the essential requirements and/or implementing rules for interoperability where uncertainty of compliance has been identified.~~

~~The Commission shall enter into consultation with the parties concerned, after which it shall take a decision in accordance with the procedure referred to in Article 5(3) of the framework Regulation.~~

↓ 552/2004 (adapted)

#### ~~Article 37~~

#### **Repeal**

~~Directives 93/65/EEC and 97/15/EC and Regulations (EC) Nos 2082/2000  549/2004, 550/2004, 551/2004  and 980/2002  552/2004  shall be  are  repealed on ~~20 October 2005.~~~~

References to the repealed Regulations shall be construed as references to this Regulation and shall be read in accordance with the correlation table in Annex III.

↓ 550/2004 (adapted)

#### ~~Article 38~~

#### **Entry into force**

~~1. This Regulation shall enter into force on the 20th ~~twentieth~~ day following that of its publication in the *Official Journal of the European Union*.~~

↓ 550/2004 (adapted)

~~2. However, Articles 7 and 8 shall enter into force one year after publication of the common requirements, as referred to in Article 6, in the Official Journal of the European Union.~~

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Strasbourg,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*

↓ 550/2004  
→<sub>1</sub> 1070/2009 Art. 2.13(a)  
→<sub>2</sub> 1070/2009 Art. 2.13(b)

## ANNEX I

### →<sub>1</sub> REQUIREMENTS FOR QUALIFIED ENTITIES ←

→<sub>2</sub> The qualified entities must: ←

- be able to document extensive experience in assessing public and private entities in the air transport sectors, in particular air navigation service providers, and in other similar sectors in one or more of the fields covered by this Regulation<sub>5</sub>;
- have comprehensive rules and regulations for the periodic survey of the abovementioned entities, published and continually upgraded and improved through research and development programmes<sub>5</sub>;

↓ 1070/2009 Art. 2.13(b)

- not be controlled by air navigation service providers, by airport management authorities or by others engaged commercially in the provision of air navigation services or in air transport services,
- be established with significant technical, managerial, support and research staff commensurate with the tasks to be carried out<sub>5</sub>.

↓ 552/2004

~~6. The body must take out liability insurance unless its liability is assumed by the Member State in accordance with national law, or the Member State itself is directly responsible for the inspections.~~

~~7. The staff of the body must observe professional secrecy with regard to all information acquired in carrying out their tasks under this Regulation.~~

↓ 552/2004 (adapted)  
⇒ new

## ANNEX V

### NOTIFIED BODIES

~~1~~ The ~~body~~ ⇒ qualified entity ⇐, its Director and the staff responsible for carrying out the checks may not ~~become~~ be involved, either directly or as authorised representatives, in the design, manufacture, marketing or maintenance of the constituents or systems or in their use. This does not exclude the possibility of an exchange of technical information between the manufacturer or constructor ~~and that body~~.

~~2. The body and the staff responsible for the checks~~ ⇒ The qualified entity ⇐ must carry out the checks with the greatest possible professional integrity and the greatest possible technical competence and must be free of any pressure and incentive, in particular of a financial type, which could affect ⊗ its ⊗ their judgment or the results of ⊗ its ⊗ their inspection, in particular from persons or groups of persons affected by the results of the checks.

~~3. The body must employ staff and possess the means required to perform adequately the technical and administrative tasks linked with the checks; it should also have access to the equipment needed for exceptional checks.~~

↓ 552/2004 (adapted)

⇒ new

4. The staff ⇒ of the qualified entity ⇐ ~~responsible for inspection~~ must have:

- sound technical and vocational training,
- satisfactory knowledge of the requirements of the inspections they carry out and adequate experience of such operations,
- the ability required to draw up the declarations, records and reports to demonstrate that the inspections have been carried out.

- ~~5. The~~ ⇒ guaranteed ⇐ impartiality ~~of the inspection staff must be guaranteed~~. Their ⊗ staff's ⊗ remuneration must not depend on the number of inspections carried out or on the results of such inspections.

↓ 1070/2009 Art. 2.13(b)

⇒ new

~~be managed and administered in such a way as to ensure the confidentiality of information required by the administration.~~

~~be prepared to provide relevant information to the national supervisory authority concerned.~~

~~have defined and documented its policy and objectives for and commitment to quality and have ensured that this policy is understood, implemented and maintained at all levels in the organisation.~~

~~have developed, implemented and maintained an effective internal quality system based on appropriate parts of internationally recognised quality standards and in compliance with EN 45004 (inspection bodies) and with EN 29001, as interpreted by the IACS Quality System Certification Scheme Requirements.~~

~~be subject to certification of its quality system by an independent body of auditors recognised by the authorities of the Member State in which it is located.~~

## ANNEX II

### CONDITIONS TO BE ATTACHED TO CERTIFICATES

#### 1. Certificates shall specify:

- (a) the national supervisory authority issuing the certificate;
- (b) the applicant (name and address);
- (c) the services which are certified;
- (d) a statement of the applicant's conformity with the common requirements, as defined in Article 6 ⇒ 8b ⇐ of ~~this~~ Regulation ⇒ (EC) No 216/2008 ⇐ ;
- (e) the date of issue and the period of validity of the certificate.

#### 2. Additional conditions attached to certificates may, as appropriate, be related to:

- (a) non-discriminatory access to services for airspace users and the required level of performance of such services, including safety and interoperability levels;
- (b) the operational specifications for the particular services;
- (c) the time by which the services should be provided;
- (d) the various operating equipment to be used within the particular services;
- (e) ring-fencing or restriction of operations of services other than those related to the provision of air navigation services;
- (f) contracts, agreements or other arrangements between the service provider and a third party and which concern the service(s);
- (g) provision of information reasonably required for the verification of compliance of the services with the common requirements, including plans, financial and operational data, and major changes in the type and/or scope of air navigation services provided;
- (h) any other legal conditions which are not specific to air navigation services, such as conditions relating to the suspension or revocation of the certificate.

**ANNEX I**

**LIST OF SYSTEMS FOR AIR NAVIGATION SERVICES**

~~For the purpose of this Regulation the EATMN is subdivided into eight systems:~~

~~1. Systems and procedures for airspace management.~~

~~2. Systems and procedures for air traffic flow management.~~

~~3. Systems and procedures for air traffic services, in particular flight data processing systems, surveillance data processing systems and human-machine interface systems.~~

~~4. Communications systems and procedures for ground-to-ground, air-to-ground and air-to-air communications.~~

~~5. Navigation systems and procedures.~~

~~6. Surveillance systems and procedures.~~

~~7. Systems and procedures for aeronautical information services.~~

~~8. Systems and procedures for the use of meteorological information.~~

## ANNEX II

### ESSENTIAL REQUIREMENTS

#### PART A: GENERAL REQUIREMENTS

~~These are network wide requirements that are generally applicable to each one of the systems identified in Annex I.~~

#### **1. Seamless operation**

~~Air traffic management systems and their constituents shall be designed, built, maintained and operated using the appropriate and validated procedures, in such a way as to ensure the seamless operation of the EATMN at all times and for all phases of flight. Seamless operation can be expressed, in particular, in terms of information sharing, including the relevant operational status information, common understanding of information, comparable processing performances and the associated procedures enabling common operational performances agreed for the whole or parts of the EATMN.~~

#### **2. Support for new concepts of operation**

↓ 1070/2009 Art. 4.4(a)

~~The EATMN, its systems and their constituents shall support, on a coordinated basis, new agreed and validated concepts of operation that improve the quality, sustainability and effectiveness of air navigation services, in particular in terms of safety and capacity.~~

↓ 552/2004

~~The potential of new concepts, such as collaborative decision making, increasing automation and alternative methods of delegation of separation responsibility, shall be examined taking due account of technological developments and of their safe implementation, following validation.~~

#### **3. Safety**

~~Systems and operations of the EATMN shall achieve agreed high levels of safety. Agreed safety management and reporting methodologies shall be established to achieve this.~~

~~In respect of appropriate ground based systems, or parts thereof, these high levels of safety shall be enhanced by safety nets which shall be subject to agreed common performance characteristics.~~

~~A harmonised set of safety requirements for the design, implementation, maintenance and operation of systems and their constituents, both for normal and degraded modes of operation, shall be defined with a view to achieving the agreed safety levels, for all phases of flight and for the entire EATMN.~~

~~Systems shall be designed, built, maintained and operated, using the appropriate and validated procedures, in such a way that the tasks assigned to the control staff are compatible with~~

human capabilities, in both the normal and degraded modes of operation, and are consistent with required safety levels.

Systems shall be designed, built, maintained and operated using the appropriate and validated procedures, in such a way as to be free from harmful interference in their normal operational environment.

#### **4. Civil-military coordination**

The EATMN, its systems and their constituents shall support the progressive implementation of civil/military coordination, to the extent necessary for effective airspace and air traffic flow management, and the safe and efficient use of airspace by all users, through the application of the concept of the flexible use of airspace.

To achieve these objectives, the EATMN, its systems and their constituents shall support the timely sharing of correct and consistent information covering all phases of flight, between civil and military parties.

Account should be taken of national security requirements.

#### **5. Environmental constraints**

Systems and operations of the EATMN shall take into account the need to minimise environmental impact in accordance with Community legislation.

#### **6. Principles governing the logical architecture of systems**

Systems shall be designed and progressively integrated with the objective of achieving a coherent and increasingly harmonised, evolutionary and validated logical architecture within the EATMN.

#### **7. Principles governing the construction of systems**

Systems shall be designed, built and maintained on the grounds of sound engineering principles, in particular those relating to modularity, enabling interchangeability of constituents, high availability, and redundancy and fault tolerance of critical constituents.

### **PART B: SPECIFIC REQUIREMENTS**

These are the requirements that are specific to each one of the systems and that complement or further refine the general requirements.

#### **1. Systems and procedures for airspace management**

##### *1.1. Seamless operation*

Information relating to pre-tactical and tactical aspects of airspace availability shall be provided to all interested parties in a correct and timely way so as to ensure an efficient allocation and use of airspace by all airspace users. This should take into account national security requirements.



## ~~2. Systems and procedures for air traffic flow management~~

### ~~2.1. Seamless operation~~

~~Systems and procedures for air traffic flow management shall support the sharing of correct, coherent and relevant strategic, pre-tactical and tactical, as applicable, flight information covering all phases of flight and offer dialogue capabilities with a view to achieving optimised use of airspace.~~

## ~~3. Systems and procedures for air traffic services~~

### ~~3.1. Flight data processing systems~~

#### ~~3.1.1. Seamless operation~~

~~Flight data processing systems shall be interoperable in terms of the timely sharing of correct and consistent information, and a common operational understanding of that information, in order to ensure a coherent and consistent planning process and resource efficient tactical coordination throughout the EATMN during all phases of flight.~~

~~In order to ensure safe, smooth and expeditious processing throughout the EATMN, flight data processing performances shall be equivalent and appropriate for a given environment (surface, terminal manoeuvring area (TMA), en-route), with known traffic characteristics and exploited under an agreed and validated operational concept, in particular in terms of accuracy and error tolerance of processing results.~~

#### ~~3.1.2. Support for new concepts of operation~~

↓ 1070/2009 Art. 4.4(b)

~~Flight data processing systems shall accommodate the progressive implementation of advanced, agreed and validated concepts of operation for all phases of flight, in particular as envisaged in the ATM Master Plan.~~

↓ 552/2004

~~The characteristics of automation intensive tools must be such as to enable coherent and efficient pre-tactical and tactical processing of flight information in parts of the EATMN.~~

~~Airborne and ground systems and their constituents supporting new, agreed and validated concepts of operation shall be designed, built, maintained and operated, using appropriate and validated procedures, in such a way as to be interoperable in terms of timely sharing of correct and consistent information and a common understanding of the current and predicted operational situation.~~

### ~~3.2. Surveillance data processing systems~~

#### ~~3.2.1. Seamless operation~~

~~Surveillance data processing systems shall be designed, built, maintained and operated using the appropriate and validated procedures, in such a way as to provide the required performance and quality of service within a given environment (surface, TMA, en-route) with~~

~~known traffic characteristics, in particular in terms of accuracy and reliability of computed results, correctness, integrity, availability, continuity and timeliness of information at the control position.~~

~~Surveillance data processing systems shall accommodate the timely sharing of relevant, accurate, consistent and coherent information between them to ensure optimised operations through different parts of the EATMN.~~

↓ 1070/2009 Art. 4.4(b)

### ~~3.2.2. Support for new concepts of operation~~

~~Surveillance data processing systems shall accommodate the progressive availability of new sources of surveillance information in such a way as to improve the overall quality of service, in particular as envisaged in the ATM Master Plan.~~

↓ 552/2004

## ~~3.3. Human-machine interface systems~~

### ~~3.3.1. Seamless operation~~

~~Human-machine interfaces of ground air traffic management systems shall be designed, built, maintained and operated using the appropriate and validated procedures, in such a way as to offer to all control staff a progressively harmonised working environment, including functions and ergonomics, meeting the required performance for a given environment (surface, TMA, en-route), with known traffic characteristics.~~

### ~~3.3.2. Support for new concepts of operation~~

~~Human-machine interface systems shall accommodate the progressive introduction of new, agreed and validated concepts of operation and increased automation, in such a way as to ensure that the tasks assigned to the control staff remain compatible with human capabilities, in both the normal and degraded modes of operation.~~

## ~~4. Communications systems and procedures for ground-to-ground, air-to-ground and air-to-air communications~~

### ~~4.1. Seamless operation~~

~~Communication systems shall be designed, built, maintained and operated using the appropriate and validated procedures, in such a way as to achieve the required performances within a given volume of airspace or for a specific application, in particular in terms of communication processing time, integrity, availability and continuity of function.~~

~~The communications network within the EATMN shall be such as to meet the requirements of quality of service, coverage and redundancy.~~

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↓ 1070/2009 Art. 4.4(b)

#### ~~4.2. Support for new concepts of operation~~

~~Communication systems shall support the implementation of advanced, agreed and validated concepts of operation for all phases of flight, in particular as envisaged in the ATM Master Plan.~~

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↓ 552/2004

### ~~5. Navigation systems and procedures~~

#### ~~5.1. Seamless operation~~

~~Navigation systems shall be designed, built, maintained and operated using appropriate and validated procedures in such a way as to achieve the required horizontal and vertical navigation performance, in particular in terms of accuracy and functional capability, for a given environment (surface, TMA, en route), with known traffic characteristics and exploited under an agreed and validated operational concept.~~

### ~~6. Surveillance systems and procedures~~

#### ~~6.1. Seamless operation~~

~~Surveillance systems shall be designed, built, maintained and operated using appropriate and validated procedures in such a way as to provide the required performance applicable in a given environment (surface, TMA, en route) with known traffic characteristics and exploited under an agreed and validated operational concept, in particular in terms of accuracy, coverage, range and quality of service.~~

~~The surveillance network within the EATMN shall be such as to meet the requirements of accuracy, timeliness, coverage and redundancy. The surveillance network shall enable surveillance data to be shared in order to enhance operations throughout the EATMN.~~

### ~~7. Systems and procedures for aeronautical information services~~

#### ~~7.1. Seamless operation~~

~~Accurate, timely and consistent aeronautical information shall be provided progressively in an electronic form, based on a commonly agreed and standardised data set.~~

~~Accurate and consistent aeronautical information, in particular concerning airborne and ground-based constituents or systems, shall be made available in a timely manner.~~

#### ~~7.2. Support for new concepts of operation~~

~~Increasingly accurate, complete and up-to-date aeronautical information shall be made available and used in a timely manner in order to support continuous improvement of the efficiency of airspace and airport use.~~

## ~~8. Systems and procedures for the use of meteorological information~~

### ~~8.1. Seamless operation~~

~~Systems and procedures for the use of meteorological information shall improve the consistency and timeliness of its provision and the quality of its presentation, using an agreed data set.~~

### ~~8.2. Support for new concepts of operation~~

~~Systems and procedures for the use of meteorological information shall improve the promptness of its availability and the speed with which it may be used, in order to support continuous improvement of the efficiency of airspace and airport use.~~

## ANNEX III

### CONSTITUENTS

EC declaration

of conformity

of suitability for use

#### 1. CONSTITUENTS

The constituents will be identified in the implementing rules for interoperability in accordance with the provisions of Article 3 of this Regulation.

#### 2. SCOPE

The EC declaration covers:

either the assessment of the intrinsic conformity of a constituent, considered in isolation, with the Community specifications to be met, or

the assessment/judgment of the suitability for use of a constituent, considered within its air traffic management environment.

The assessment procedures implemented by the notified bodies at the design and production stages will draw upon the modules defined in Decision 93/465/EEC, in accordance with the conditions set out in the relevant implementing rules for interoperability.

#### 3. CONTENTS OF THE EC DECLARATION

The EC declaration of conformity or suitability for use and the accompanying documents must be dated and signed.

That declaration must be written in the same language as the instructions and must contain the following:

the Regulation references;

the name and address of the manufacturer or its authorised representative established within the Community (give trade name and full address and, in the case of the authorised representative, also give the trade name of the manufacturer);

description of the constituent;

description of the procedure followed in order to declare conformity or suitability for use (Article 5 of this Regulation);

all of the relevant provisions met by the constituent and in particular its conditions of use;

~~if applicable, name and address of notified body or bodies involved in the procedure followed in respect of conformity or suitability for use and date of examination certificate together, where appropriate, with the duration and conditions of validity of the certificate,~~

~~where appropriate, reference to the Community specifications followed,~~

~~– identification of signatory empowered to enter into commitments on behalf of the manufacturer or of the manufacturer's authorised representative established in the Community.~~

## ~~ANNEX IV~~

### ~~SYSTEMS~~

~~EC declaration of verification of systems~~

~~Verification procedure for systems~~

#### ~~1. CONTENTS OF EC DECLARATION OF VERIFICATION OF SYSTEMS~~

~~The EC declaration of verification and the accompanying documents must be dated and signed. That declaration must be written in the same language as the technical file and must contain the following:~~

~~the Regulation references;~~

~~name and address of the air navigation service provider (trade name and full address);~~

~~a brief description of the system;~~

~~description of the procedure followed in order to declare conformity of the system (Article 6 of this Regulation);~~

~~name and address of the notified body which carried out tasks pertaining to the verification procedure, if applicable;~~

~~the references of the documents contained in the technical file;~~

~~where appropriate, reference to the Community specifications;~~

~~all the relevant temporary or definitive provisions to be complied with by the systems and in particular, where appropriate, any operating restrictions or conditions;~~

~~if temporary: duration of validity of the EC declaration;~~

~~identification of the signatory.~~

#### ~~2. VERIFICATION PROCEDURE FOR SYSTEMS~~

~~Verification of systems is the procedure whereby an air navigation service provider checks and certifies that a system complies with this Regulation and may be put into operation on the basis of this Regulation.~~

~~The system is checked for each of the following aspects:~~

~~overall design;~~

~~development and integration of the system, including in particular constituent assembly and overall adjustments;~~

~~operational system integration,~~

~~specific system maintenance provisions if applicable.~~

~~Where involvement of a notified body is required by the relevant implementing rule for interoperability, the notified body, after having carried out the tasks incumbent upon it in accordance with the rule, draws up a certificate of conformity in relation to the tasks it carried out. This certificate is intended for the air navigation service provider. This provider then draws up the EC declaration of verification intended for the national supervisory authority.~~

### ~~3. TECHNICAL FILE~~

~~The technical file accompanying the EC declaration of verification must contain all the necessary documents relating to the characteristics of the system, including conditions and limits of use, as well as the documents certifying conformity of constituents where appropriate.~~

~~The following documents shall be included as a minimum:~~

~~indication of the relevant parts of the technical specifications used for procurement that ensure compliance with the applicable implementing rules for interoperability and, where appropriate, the Community specifications,~~

~~list of constituents as referred to in Article 3 of this Regulation,~~

~~copies of the EC declaration of conformity or suitability for use with which the above mentioned constituents must be provided in accordance with Article 5 of this Regulation accompanied, where appropriate, by a copy of the records of the tests and examinations carried out by the notified bodies,~~

~~where a notified body has been involved in the verification of the system(s), a certificate countersigned by itself, stating that the system complies with this Regulation and mentioning any reservations recorded during performance of activities and not withdrawn,~~

~~where there has not been involvement of a notified body, a record of the tests and installation configurations made with a view to ensuring compliance with essential requirements and any particular requirements contained in the relevant implementing rules for interoperability.~~

### ~~4. SUBMISSION~~

~~The technical file must be attached to the EC declaration of verification which the air navigation service provider submits to the national supervisory authority.~~

~~A copy of the technical file must be kept by the provider throughout the service life of the system. It must be sent to any other Member States which so request.~~



**ANNEX III**

**CORRELATION TABLE**

Regulation 549/2004	Regulation 550/2004	Regulation 551/2004	Regulation 552/2004	This Regulation
Article 1(1) to (3)				Article 1(1) to (3)
		Article 1(3)		Article 1(4)
Article 1(4)				Article 1(5)
	Article 1			-----
		Article 1(1), (2) and (4)		-----
			Article 1	-----
Article 2 Nos (1) to (35)				Article 2 Nos (1) to (35)
				Article 2 Nos (36) to (38)
Article 2 Nos 17, 18, 23, 24, 32, 35, 36				-----
Article 3				-----
Article 4(1) and (2)				Article 3(1) and (2)
				Article 3(3) and (4)
Article 4(3)				Article 3(5)
				Article 3(6)

Article 3(4) to (5)				Article 3(7) and (8)
				Article 3(9)
	Article 2(1)			Article 4(1a)
				Article 4(1b) to (1g)
	Article 2(2)			Article 4(2)
				Article 5(1) and (2)
	Article 2(3) to (6)			Article 5(3) to (6)
	Article 3(1) and (2)			Article 6(1) and (2)
			Article 8(1) and (3)	Article 6(3) and (4)
				Article 6(5)
			Article 8(2) and (4)	-----
	Article 6			----- -
Article 10(1)				Article 7(1)
				Article 7(2)
	Article 7(1)			Article 8(1)
				Article 8(2)
	Article 7(4) and (6)			Article 8(3) and (4)

	Article 7(2), (3), (5), (7) to (9)			-----
	Article 8			Article 9
				Article 10
	Article 9			-----
Article 11				Article 11
	Article 14			Article 12
	Article 15			Article 13
	Article 16			Article 14
	Article 15a			Article 15
	Article 9a(1)			Article 16(1) and (3)
				Article 16(2)
	Article 9a(2) point (i)			-----
	Article 9a(2)			Article 16(4)
				Article 16(5)
	Article 9a(3) to (9)			Article 16(6) to (12)
	Article 9b			-----
		Article 6(1) to (2b)		Article 17(1) and (2b)
				Article 17(2c) to (2e)

		Article 6(3) – (4d)		Article 17(3) to (4d)
				Article 17(4e)
		Article 6(4e) to (4f)		Article 17(4f) and (4g)
		Article 6(5) and (7)		Article 17(5) and (6)
		Article 6(8) and (9)		-----
	Article 10			Article 18
				Article 19
	Article 11			Article 20
	Article 12			Article 21
	Article 13			Article 22
		Article 3		-----
		Article 3a		Article 23
		Article 4		-----
		Article 7		-----
		Article 8		-----
				Article 24(1) and (2)
			Article 3(3)	-----
			Article 2 to 3(2)	-----
			Article 3(4) to 7	-----

	Article 17(1)			Article 25
				Article 26
Article 5(1) to (3)				Article 27(1) to (3)
Article 5(4) and (5)				-----
Article 10(2) and (3)				Article 28(1) and (2)
Article 6				Article 29
Article 7				Article 30
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	Article 4			-----
			Article 9	-----
	Article 18			Article 32
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Article 12(2) to (4)				Article 34(1) to (3)
Article 12(1)				-----
	Article 18a			-----
		Article 10		-----
Article 13				Article 35
Article 13a				Article 36
			Article 10	-----

			Article 11	Article 37
	Article 19(1)			Article 38
	Article 19(2)			-----
	Annex I		Annex V	Annex I
			Annex I	-----
	Annex II			Annex II
			Annex II	-----
				Annex III
			Annex III	-----
			Annex IV	-----

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