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RAPPORT

du: Coreper
au: Conseil
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n° prop. Cion: 11323/08 AVIATION 138 CODEC 906

Objet: Proposition de Règlement du Parlement européen et du Conseil modifiant les règlements (CE) n° 549/2004, (CE) n° 550/2004, (CE) n° 551/2004 et (CE) n° 552/2004 afin d'accroître les performances et la viabilité du système aéronautique européen

Introduction

La proposition en objet constitue l'élément majeur d'une série de mesures adoptées en juin 2008 par la Commission dans le but d'améliorer sensiblement les performances du système aéronautique européen par une plus grande intégration du réseau européen de gestion du trafic aérien et l'amélioration de la fourniture de services de navigation aérienne. Cette proposition modifie les quatre règlements "Ciel unique" initiaux adoptés en 2004. Parmi les autres mesures proposées figurent le plan directeur du programme SESAR, qui a fait l'objet d'une résolution adoptée par le Conseil TTE en octobre dernier (doc. 13621/1/08 REV 1), la modification de l'entreprise commune SESAR, pour laquelle le Conseil TTE a arrêté une orientation générale lors de sa session d'octobre dernier (doc. 13645/08) et le règlement modificatif relatif à l'Agence européenne de la sécurité aérienne, qui est en cours d'examen par le Conseil. Ces propositions sont accompagnées de mesures de la Commission relatives à la capacité aéroportuaire (Observatoire communautaire).

En ce qui concerne les quatre règlements "Ciel unique" adoptés en 2004, il y a quatre ans donc, la Commission estime qu'il est nécessaire de poursuivre les travaux afin de répondre aux défis grandissants que pose la gestion de l'espace aérien européen:

- En premier lieu, le défi du développement durable: la nécessité de réduire l'impact de l'aviation sur l'environnement, au moyen par exemple de la création d'un réseau de routes européen rationnel incluant des routes plus courtes pour le trafic intra-communautaire. Cette question fait l'objet de plusieurs dispositions dans la proposition de la Commission, en particulier à l'article 6 du règlement n° 551/2004 (Gestion et conception du réseau).
- Les performances constituent un défi tout aussi important: l'amélioration des performances du réseau en termes de réduction des délais et de baisse des coûts pour les utilisateurs de l'espace aérien se fera par l'introduction d'objectifs de performances (dans le cadre d'un plan global d'amélioration des performances), l'introduction accélérée de blocs d'espace aérien fonctionnels et le renforcement des fonctions de réseau au niveau européen.
- Enfin, l'amélioration de la gouvernance, particulièrement le renforcement de l'indépendance des autorités de surveillance nationales à l'article 4 du règlement n° 549/2004.

Cette proposition est étroitement liée à celle visant à étendre les compétences de l'Agence européenne de la sécurité aérienne aux domaines de la sécurité de la gestion du trafic aérien, des services de navigation aérienne et des aéroports. Les délégations et la présidence sont convenues, étant donné le lien étroit qui existe entre ces deux propositions, qu'il était préférable d'examiner en premier lieu les objectifs visés dans le cadre du "Ciel unique européen" sur la base des règlements fondateurs, tout au moins pour ce qui est des questions relatives à la gestion du trafic. Bien que les dispositions concernant la supervision en matière de sécurité soient d'une grande importance, il a été convenu que la forme que prendront ces dispositions devrait dépendre des besoins découlant des quatre règlements modifiés. C'est pour cette raison que la présidence a commencé par l'examen de la proposition en objet.

La première lecture du Parlement européen devrait avoir lieu en janvier 2009.

Travaux réalisés par les instances du Conseil

Le groupe a beaucoup travaillé sur ce dossier depuis le mois de juillet, pendant la présidence française. Après avoir été examiné à deux reprises par le Coreper, le texte est désormais prêt pour être présenté au Conseil, en vue de l'adoption d'une orientation générale.

Afin de faciliter l'examen du texte, celui-ci est présenté sous forme consolidée dans les annexes I à IV, de la manière suivante:

- Annexe I - Considérants
- Annexe II - règlement-cadre (règlement (CE) n° 549/2004)
- Annexe III - règlement sur la fourniture de services (règlement (CE) n° 550/2004)
- Annexe IV - règlement sur l'espace aérien (règlement (CE) n° 551/2004)
- Annexe V - règlement sur l'interopérabilité (règlement (CE) n° 552/2004)

La proposition de la Commission est, quant à elle, présentée sous la forme d'un seul ensemble de modifications des quatre règlements. Il y a également lieu de noter que le groupe a examiné l'analyse d'impact qui accompagne la proposition de la Commission et est convenu qu'elle remplissait les conditions requises. Les points de désaccord qui subsistent et qui requièrent un examen par le Conseil sont indiqués dans les notes de bas de page.

Les délégations ont salué la proposition de la Commission et se sont largement accordées à dire que le moment était venu de réexaminer les règlements de 2004, vu l'augmentation constante du trafic aérien et les retards imputés aux problèmes liés à la fragmentation de l'espace aérien européen. Toutefois, au cours de l'examen de la proposition, un certain nombre de changements susceptibles d'améliorer le texte et d'éviter différents problèmes de mise en œuvre relevés par les délégations ont été proposés.

En ce qui concerne le **statut des autorités de surveillance nationales** (article 4 du règlement-cadre n° 549/2004, annexe II, p. 27 et 28), la proposition de la Commission prévoit que les États membres seraient tenus de renforcer l'indépendance de leurs autorités de surveillance nationales. Ce renforcement, que la Commission considère comme une des pierres angulaires de sa proposition, prend, dans la proposition, la forme d'une mention de l'indépendance fonctionnelle des autorités nationales de surveillance vis-à-vis de "*toute autre entité publique ou privée*". Cette formulation, qui entraînerait l'instauration d'une autorité de surveillance nationale complètement séparée, s'est heurtée à l'opposition d'un nombre important de délégations. Un grand nombre d'entre elles ont estimé que cette disposition serait trop pesante (en particulier pour les petits États membres) et qu'elle irait à l'encontre de la prérogative qu'ont les États membres de déterminer eux-mêmes le meilleur moyen de mettre en œuvre le règlement. Le texte, dans sa version actuelle, décrit l'indépendance dont jouissent les autorités nationales de surveillance en matière de prise de décision, tout en indiquant clairement que cette liberté d'action dans tous les domaines liés à la mise en œuvre des règlements n'empêche pas les États membres de définir leurs propres arrangements administratifs en ce qui concerne les autorités nationales de surveillance. La deuxième phrase du paragraphe 3 garantit que ces arrangements ne portent pas atteinte à l'indépendance d'action des autorités nationales de surveillance. Ce texte a reçu le soutien de la grande majorité des délégations (notes de bas de page n° 15 et 16, p. 27).

L'un des éléments les plus importants de la proposition de la Commission est le **système d'amélioration des performances**, qui fait l'objet de l'article 11 du règlement-cadre (règlement (CE) n° 549/2004, annexe II, pages 32-36). Ce nouveau système est destiné à stimuler l'amélioration des performances du réseau européen en créant un mécanisme structuré de planification, de compte rendu, d'examen et d'évaluation, associé à des mesures correctrices exécutoires. Le groupe a entièrement revu le texte de la Commission (en collaboration étroite avec celle-ci), afin d'apporter les précisions nécessaires quant à la teneur du système, à la définition des procédures applicables et à la répartition des responsabilités entre les États membres et la Commission. Néanmoins, le texte de la présidence reprend sur le fond la proposition de la Commission.

En vue d'encourager la coopération transfrontière, au moyen soit de blocs d'espace aérien fonctionnels, soit de dispositions ad hoc supplémentaires, la Commission souhaitait limiter les motifs pour lesquels les États membres peuvent refuser de **désigner des prestataires de services de la circulation aérienne** (article 8 du règlement sur la fourniture de services, règlement (CE) n° 550/2004, annexe III, pages 45-47). En réponse aux préoccupations exprimées par plusieurs délégations, cette limitation ne concerne plus que les cas où le prestataire fournit des services transfrontières. Cela devrait permettre de ne pas remettre en cause l'objectif de défragmentation du réseau européen, tout en protégeant les intérêts légitimes des États membres en matière de désignation des prestataires de services. Le texte présenté est appuyé par une large majorité de délégations (note de bas de page 18, page 46). Seule une question reste à régler.

Compte tenu des progrès, qu'elle juge décevants, accomplis en ce qui concerne **la mise en place de blocs d'espace aériens fonctionnels** (qui constituait un élément essentiel de l'amélioration des performances dans les règlements initiaux relatifs au ciel unique européen), la Commission a proposé de fixer à 2012 l'échéance pour la création de ces blocs dans les États membres (article 9 bis du règlement sur la fourniture de services, règlement (CE) n° 550/2004, annexe III, pages 48-50). Une disposition de sauvegarde a été ajoutée, qui garantit que, si le règlement est adopté en 2009, les États membres auront encore suffisamment de temps pour mettre en place ces blocs d'espace aériens fonctionnels après l'adoption des modalités d'application nécessaires par la Commission. Le texte présenté est appuyé par l'ensemble des délégations. Cette question se révélera probablement importante dans les discussions qui auront lieu avec le Parlement.

La proposition de la Commission prévoyait la possibilité pour la Commission d'élaborer des **projets communs** destinés à améliorer les "*infrastructures collectives de navigation aérienne*" (article 15 bis du règlement sur la fourniture de services, règlement (CE) n° 550/2004, annexe III, page 57). Ce texte a été largement remanié pour tenir compte des inquiétudes exprimées par les délégations quant à l'incidence budgétaire que pourraient avoir de tels projets, tant pour les États membres que pour les usagers de l'espace aérien, en termes de redevances de navigation aérienne. Le Conseil est invité à étudier la dernière version du texte, qui figure dans le présent document et qui a été élaborée à l'issue du dernier examen du dossier par le Coreper (note de bas de page 22, page 57).

Après l'adoption de sa proposition, la Commission a proposé l'ajout d'un nouvel article concernant le principe de **réciprocité dans le cadre des systèmes de tarification** (article 16 bis du règlement sur la fourniture de services, règlement (CE) n° 550/2004, annexe III, page 59). Cet article visait à permettre à la Communauté de prendre des mesures compensatoires lorsque des pays tiers imposent des dispositions discriminatoires aux transporteurs communautaires en ce qui concerne l'utilisation de leur espace aérien. Tout en convenant que la situation actuelle n'est pas satisfaisante, un certain nombre de délégations s'étaient déclarées vivement préoccupées par la proposition de la Commission au motif qu'elle pouvait entraîner des mesures de rétorsion portant préjudice aux transporteurs communautaires, qu'elle supposait que la Communauté était compétente dans des domaines qui relèvent des États membres ou qu'elle ne serait pas efficace pour encourager les partenaires commerciaux de la Communauté à supprimer les dispositions discriminatoires en question. Plusieurs autres délégations ont appuyé l'idée sous-tendant la proposition de la Commission, soulignant l'absence de progrès réalisés dans les négociations menées avec certains pays tiers sur cette question. Le Conseil est invité à étudier la dernière version de cet article, qui figure dans le présent document et qui a été élaborée à l'issue du dernier examen du dossier par le Coreper (note de bas de page 23, page 59).

La Commission a proposé la création d'une **région européenne d'information de vol unique** (article 3 du règlement (CE) n° 551/2004 sur l'espace aérien, annexe IV, page 63). Cela a suscité un certain nombre de préoccupations parmi les délégations, qui ont avancé que l'utilité d'une telle initiative n'était pas démontrée. Le texte actuel reprend le texte du règlement de 2004 actuellement en vigueur, si ce n'est que le considérant 17 laisse la possibilité aux États membres de demander la création d'une telle région d'information de vol à l'OACI, pour autant que les conditions requises soient réunies à l'avenir.

Enfin, la proposition contient des dispositions intéressantes concernant **la gestion et la conception du réseau** (article 6 du règlement n° 551/2004, annexe IV, page 66). Celles-ci visent à renforcer le caractère paneuropéen du réseau de gestion du trafic aérien en accordant des responsabilités à la Commission en ce qui concerne la conception du réseau de routes européen (mais à l'exclusion, par exemple, des routes terminales), l'affectation des bandes de radiofréquences, ainsi que d'autres tâches liées au réseau de gestion du trafic aérien. Cet article consacre également le rôle d'Eurocontrol en ce qui concerne la gestion des courants de trafic aérien. Si, dans l'ensemble, les délégations approuvent le nouvel article, la question des tâches dévolues à la Commission en ce qui concerne l'affectation de bandes de radiofréquences a suscité l'inquiétude de certaines délégations. Au terme d'un débat approfondi, le Conseil a été invité à étudier la dernière version du texte, qui figure dans le présent document et qui a été élaborée à la suite du dernier examen du dossier par le Coreper (note de bas de page 25, page 68).

Il reste encore quelques questions, de moindre importance, à résoudre. Celles-ci sont indiquées dans les notes de bas de page du tableau figurant dans les annexes.

Toutes les délégations maintiennent une réserve générale d'examen sur les passages qui ont été modifiés à la suite de la dernière réunion du groupe, les 27 et 28 novembre, et qui sont indiqués en caractères **gras** et ~~barrés~~. DK, FR et MT ont émis une réserve d'examen parlementaire sur la proposition de la Commission. Le texte relatif à Gibraltar, figurant dans les considérants ainsi qu'à l'article 1, fera l'objet d'un addendum au présent rapport.

Conclusion

Le Conseil est invité à régler ces questions et à dégager une orientation générale sur le texte qui figure dans les annexes, dans l'attente de l'avis du Parlement européen en première lecture.

Proposal for a
**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
amending Regulations (EC) No 549/2004, (EC) No 550/2004, (EC) No 551/2004 and
(EC) No 552/2004 in order to improve the performance and sustainability of the
European aviation system
(Text with EEA relevance)**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 80(2) thereof,

Having regard to the proposal from the Commission,

Having regard to the Opinion of the European Economic and Social Committee¹,

Having regard to the Opinion of the Committee of the Regions²,

Acting in accordance with the procedure laid down in Article 251 of the Treaty³,

Whereas:

¹ OJ C...
² OJ C...
³ OJ C....

Annex I - Recitals

- (1) 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.
- (2) The adoption by the European Parliament and the Council of Regulation (EC) No 549/2004 laying down the framework for the creation of the Single European Sky⁴, Regulation (EC) No 550/2004 on the provision of air navigation services in the Single European Sky⁵, Regulation (EC) No 551/2004 on the organisation and use of the airspace in the single European sky⁶, and Regulation (EC) No 552/2004 on the interoperability of the European air traffic management network⁷ (the first package of the single European sky legislation) laid down a firm legal basis for a seamless, interoperable and safe air traffic management (ATM) system.
- (3) [recital re-numbered as 5a]
- (4) In response to strong demand from industry, Member States and other stakeholders to simplify and increase the effectiveness of the regulatory framework for aviation in Europe, the High Level Group on the future of the European aviation regulatory framework (hereinafter "the High Level Group") was established in November 2006. This Group, made up of representatives of most stakeholder groups, submitted a report in July 2007 containing a set of recommendations on how to improve the performance and governance of the European aviation system. The Group recommended according the environment the same importance as safety and efficiency in the aviation system and insisted that industry and regulators should work together to ensure that ATM contributes as much as possible to sustainability.

⁴ OJ L 96, 31.3.2004, p. 1.

⁵ OJ L 96, 31.3.2004, p. 10.

⁶ OJ L 96, 31.3.2004, p. 20.

⁷ OJ L 96, 31.3.2004, p. 26.

Annex I - Recitals

- (5) At its meeting of 7 April 2008 the Council of the European Union invited the Commission to develop, in accordance with the recommendations of the High Level Group, an overall system approach in line with the gate-to-gate concept to enhance safety, improve ATM and to increase cost efficiency.
- (5a) In order to complete the creation of the single European sky, it is necessary to adopt additional measures at Community level, in particular to improve the performance of the European aviation system in key areas such as environment, capacity as well as flight and cost efficiency, all within the overriding safety objectives. It is also necessary to adapt the Single European Sky legislation to technical progress.
- (6) Council Regulation (EC) No 219/2007 of 27 February 2007 on the establishment of a Joint Undertaking to develop a new-generation European air traffic management system (SESAR)⁸ calls for the development and implementation of an ATM Master Plan. The implementation of the ATM Master Plan requires regulatory measures to support the development, introduction and financing of new concepts and technologies. It should result in a system composed of fully harmonised and interoperable components, which guarantee high performance air transport activities in Europe.
- (6a) 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, 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.

⁸ OJ L 64, 2.3.2007, p. 1.

Annex I - Recitals

- (7) [...]
- (8) 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 these authorities from exercising their tasks **within an administrative framework** ~~administratively within the national civil aviation authorities.~~
- (8a) National supervisory authorities have a key role in the implementation of the single European sky schemes and the Commission should therefore facilitate cooperation among them in order to exchange best practices and develop a common approach, including through enhanced cooperation at regional level. This cooperation should take place on a regular basis.
- (9) The social partners should be better informed and consulted on all measures having significant social implications. At the Community level, the Sectoral Dialogue Committee set up under Commission Decision 98/500/EC of 20 May 1998 on the establishment of Sectoral Dialogue Committees promoting the Dialogue between the social partners at European level⁹ should also be consulted.

⁹ OJ L 225, 12.8.1998, p. 27. Decision as last amended by Commission Regulation (EC) No 1792/2006 (OJ L 362, 20.12.2006, p. 1).

Annex I - Recitals

- (10) To drive improved performance of ATM and air navigation services (ANS), it is necessary to establish a framework for the definition, implementation and enforcement of binding performance targets in key performance areas in line with International Civil Aviation Organisation's (ICAO) policies. An indispensable feature of such a framework should be an appropriate mechanism for reporting, examining, evaluating and disseminating performance data of ATM and ANS along with a relevant incentives scheme to encourage achievement of the targets.
- (10a) National supervisory authorities should have the flexibility to reflect specific national or regional circumstances when formulating their national and regional plans. When approving or adopting national plans, Member States should be entitled to make the appropriate modifications.
- (10b) When establishing charges for air navigation services the Commission and Member States should endeavour to use common forecasts. Some flexibility should be permitted in those cases where traffic diverges significantly from forecast, in particular by using appropriate alert mechanisms.
- (11) [recital merged with previous recital 3, now re-numbered as 5a]
- (12) It should be clarified that regarding the cross-border provision of services, Member States should ensure that the designation of an air traffic services provider is not prevented by any national legal system on the grounds that it is established in another Member State or is owned by nationals of that Member State.

Annex I - Recitals

- (13) The functional airspace blocks are key enablers to enhance cooperation between air navigation service providers in order to improve performance and create synergies. Member States should establish functional airspace blocks by the end of 2012 at the latest.
- (13a) When one or more Member States establish a functional airspace block, other Member States, the Commission and other interested parties have an opportunity to submit their observations with the aim of facilitating an exchange of views. These observations should only be advisory in nature for the Member State(s) concerned.
- (14) [...]
- (15) The reports of the Eurocontrol Performance Review Commission and the final report of the High Level Group confirm that the route network and airspace structure cannot 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.
- (16) A progressively more integrated operating airspace should therefore be established for general air traffic.

Annex I - Recitals

- (17) In view of the creation of functional airspace blocks and the setting up of the performance scheme, the Commission should take into account the necessary conditions for the Community of the creation of a Single European Flight Information Region (SEFIR), to be requested by the Member States at ICAO in accordance with that organisation's established procedures and with Member States' rights, obligations and responsibilities under the Chicago Convention. By encompassing the airspace under the responsibility of the Member States, the SEFIR should facilitate common planning and integrated operations in order to overcome regional bottlenecks. Such a SEFIR should include the necessary flexibility to reflect specific needs such as traffic density and the level of complexity required.
- (18) Airspace users face disparate conditions of access to, and freedom of movement within, Community airspace. This is due to the lack of harmonised Community rules of the air, in particular a harmonised classification of airspace. The Commission should therefore harmonise such rules on the basis of ICAO standards.
- (19) The EATMN should be designed and implemented with a view to the safety, environmental sustainability, capacity enhancement and improved cost-efficiency of the whole air transport network. As highlighted in the Eurocontrol Performance Review Commission's report on 'Evaluation of Functional Airspace Block Initiatives and their Contribution to Performance Improvement', this could be best ensured through coordinated air transport network management at Community level.

Annex I - Recitals

- (19a) In line with the Statement on military issues related to the Single European Sky accompanying Regulation No 549/2004, civil/military cooperation and coordination should play a fundamental role in the implementation of the Single European Sky, in order to move towards an enhanced flexible use of airspace for the achievement of the Single European Sky performance objectives, having due regard to military mission effectiveness.
- (20) It is essential to achieve a common, harmonised airspace structure in terms of routes, to base the present and future organisation of airspace on common principles, to ensure the progressive implementation of the ATM Master Plan, to optimise the use of scarce resources to avoid unnecessary equipage costs, and to design and manage airspace in accordance with harmonised rules. To this end the Commission should be responsible for adopting the necessary rules and implementing decisions with legally binding effect.
- (20a) The list of functions for network management and design should be amended to integrate, if necessary, future network functions defined by the ATM Master Plan. In doing so, the Commission should make the best possible use of Eurocontrol expertise.
- (21) The High Level Group recommended building new or enhanced functions on existing foundations and empowering Eurocontrol, while positioning the Community as the single regulator and respecting the principle of separation of regulation from service provision. Accordingly, the Commission should entrust Eurocontrol, which has new governance arrangements in place, with the execution of tasks related to the functions mentioned in the previous recital, which do not involve the adoption of binding measures of a general scope or the exercise of political discretion. The execution of these tasks by Eurocontrol should be done in an impartial and cost-effective manner and with the full involvement of the airspace users and air navigation service providers.

Annex I - Recitals

- (22) 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. Furthermore, the Commission communication on an action plan for airport capacity, efficiency and safety in Europe¹⁰ highlights the need to ensure consistency between flight plans and airport slots.
- (23) The provision of modern, complete, high-quality and timely aeronautical information has a significant impact on safety and facilitating access to Community airspace and freedom of movement within it. Taking account of the ATM Master Plan, the Community should take the initiative to modernise this sector in cooperation with Eurocontrol and ensure that users are able to access these data through a single public point of access, providing a modern, user-friendly and validated integrated briefing.
- (23a) For the electronic portal on meteorological information, the Commission should take into account the various sources of information including from designated service providers, where relevant.
- (24) To avoid unnecessary administrative burden and overlapping verification procedures, certificates 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, and repealing Council Directive 91/670/EEC, Regulation (EC) No 1592/2002 and Directive 2004/36/EC¹¹ should be accepted for the purposes of the present Regulation, where they apply to constituents or systems.

¹⁰ COM(2006) 819.

¹¹ OJ L 79, 19.3.2008, p. 1.

Annex I - Recitals

- (24a) A certificate issued in accordance with Regulation 216/2008 and used to demonstrate an alternative means of compliance with the essential requirements of Regulation (EC) No. 552/2004, should be accompanied by a technical file as required for the purposes of certification by EASA.
- (24b) Certain requirements of Regulation 552/2004 should not apply to systems put into service before 20 October 2005. National supervisory authorities and air navigation service providers should have the freedom to agree, at the national level, the procedures and documentation required to demonstrate compliance of ATM systems in service before 20 October 2005 with the essential requirements of Regulation 552/2004. Implementing rules and Community specifications adopted after the adoption of this Regulation should take account of this arrangement and this should not result in a retrospective requirement for documentary evidence.
- (25) The High Level Group recommended in its final report to the Commission that the SESAR programme should specifically address the definition of interoperable procedures, systems and information exchange within Europe and with the rest of the world. This should also include the development of relevant standards and the identification of new implementing rules or Community specifications in the context of the Single European Sky.
- (25a) When adopting implementing measures including standards laid down by Eurocontrol, the Commission should ensure that the measures include all necessary improvements to the original standards and take full account of the need to avoid double regulation.

Annex I - Recitals

- (25b) In view of the proposed extension of the competences of the European Aviation Safety Agency to include air traffic management safety, consistency should be ensured between Regulations (EC) No. 549/2004, (EC) No. 550/2004, (EC) No. 551/2004 and (EC) No. 552/2004 and (EC) No. 216/2008.¹²
- (26) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC laying down the procedures for the exercise of implementing powers conferred on the Commission¹³.
- (27) In particular, the Commission should be empowered to update measures due to technical or operational developments as well as to lay down the basic criteria and procedures for the exercise of certain management network functions. Since those measures are of a general scope and are designed to amend non-essential elements of this Regulation by supplementing it with the addition of new non-essential elements, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC.
- (28) When on imperative grounds of urgency the normal time limits for the regulatory procedure with scrutiny cannot be complied with, the Commission should be able to use the urgency procedure provided for in Article 5a(6) of Decision 1999/468/EC.
- (29) Regulations (EC) No 549/2004, (EC) No 550/2004, (EC) No 551/2004 and (EC) No 552/2004 should therefore be amended accordingly.

HAVE ADOPTED THIS REGULATION:

¹² This recital assumes that implementing rules (e.g. transposition into Community law of ESARRs) are also covered by reference to their respective Basic Acts.

¹³ OJ L 184, 17.7.1999, p. 23. Decision as amended by Decision 2006/512/EC (OJ L 200, 22.7.2006, p. 11).

Regulation (Regulation (EC) No 549/2004)

Article 1

1. The objective of the single European sky initiative is to enhance 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. In pursuit of this objective, this Regulation establishes a harmonised regulatory framework for the creation of the Single European Sky.
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 13. This Regulation and the abovementioned measures do not cover military operations and training.
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. In this context, an additional objective of this regulation is, 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.

Article 2
Definitions

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

- 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;

Annex II - Framework Regulation (Regulation (EC) No 549/2004)

- 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 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;
- 8) "airspace users" means operators of aircraft operated as general air traffic;
- 9) "air traffic flow management" means a function 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;
- 10) 'air traffic management (ATM)' means the aggregation of the airborne and ground-based functions (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;
- 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);

Annex II - Framework Regulation (Regulation (EC) No 549/2004)

- 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;
- 13a) "ATM Master Plan" means the plan to be endorsed by the Council in accordance with Article 1(2) of Council Regulation (EC) No 219/2007;
- 14) "bundle of services" means two or more air navigation services;
- 15) "certificate" means a document issued by a ~~Member State~~ **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;
- 16) "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) (1) 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 EATMN depends;

Annex II - Framework Regulation (Regulation (EC) No 549/2004)

- 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 (1);
- 21) [...]
- 22) '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 Eurocontrol*;
- 23) "flight information region" means an airspace of defined dimensions within which flight information services and alerting services are provided;
- 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;
- 25) '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 optimised and/or integrated;
- ~~25a) "regional" means at the level of a functional airspace block;~~¹⁴
- 26) "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 ICAO;

¹⁴ In order to avoid confusion, all references in the text to '*regional*' have been replaced with references to '*functional airspace blocks*', as appropriate.

Annex II - Framework Regulation (Regulation (EC) No 549/2004)

- 27) "ICAO" means the International Civil Aviation Organisation, as established by the 1944 Chicago Convention on International Civil Aviation.
- 28) "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. Interoperability is achieved by making the systems and constituents compliant with the essential requirements;
- 29) "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;
- 30) "navigation services" means those facilities and services that provide aircraft with positioning and timing information;
- 31) "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;
- 33) "putting into service" means the first operational use after the initial installation or an upgrade of a system;

Annex II - Framework Regulation (Regulation (EC) No 549/2004)

- 34) "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;
- 37) [...]
- 38) "surveillance services" means those facilities and services used to determine the respective positions of aircraft to allow safe separation;
- 39) "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;
- 40) "upgrade" means any modification that changes the operational characteristics of a system.
- 41) "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.

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) (1);
 - (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) (2); 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) (3);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.

Article 4

National supervisory authorities ¹⁵

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(1).
2. The national supervisory authorities shall be independent of air navigation service providers. This independence shall be achieved through adequate separation, at the functional level at least, between the national supervisory authorities and such providers.
3. ~~Member States shall ensure that~~ National supervisory authorities **shall** exercise their powers impartially, independently¹⁶ and transparently. This ~~independence~~ shall be achieved by applying appropriate management and control mechanisms, 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.**

¹⁵ RO: reservation on the entire article unless the following clear definition of functional separation is included in the Regulation, in Article 2(42)(new): *‘The separation, at least at a functional level, of two entities which are part of a body that has its own legal personality, implies the meeting of at least the following requirements: the functional relationships between the two entities shall be established so that these ones work independently of each other, in a transparent and coherent way with regard to the aims that the body concerned must achieve; there are no hierarchical relationship between the two entities; the relationships between the two entities shall be established on the basis of management mechanisms and procedures described in the Management Manual of that body; the identification, in the accounts of the body, in a separate way, of the costs and revenues of each entity. In order to ensure the fulfillment of these requirements, control mechanisms of the budgetary allocation and accounts are applied at the level of the body as well as an internal and/ or external audit of each of the entities.’*

¹⁶ RO: reservation on use of the word ‘independently’ at this point: All other delegations: scrutiny reservation on the changes made at Coreper to paragraph 3 of this article and to recital 8.

Annex II - Framework Regulation (Regulation (EC) No 549/2004)

4. 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.
5. 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 paragraphs 2, 3 and 4.

Article 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.
2. Where reference is made to this paragraph, Articles 3 and 7 of Decision 1999/468/EC 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 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.

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.

Article 6

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, manufacturing industry and professional staff representative bodies shall belong. The role of this body shall be solely to advise the Commission on the implementation of the Single European Sky.

Article 7

Relations with European third countries

The Community 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, it shall endeavour, either within the framework of agreements concluded with neighbouring third countries, or within the context of Eurocontrol, to extend the scope of this Regulation, and of the measures referred to in Article 3, to those countries.

Article 8

Development of implementing measures

1. For the development of implementing rules the Commission may issue mandates to Eurocontrol or, where appropriate, to another body, setting out the tasks to be performed and the timetable for this. The Commission shall act in accordance with the procedure referred to in Article 5(2).
- 1a. 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.

Article 9

Penalties

The penalties that Member States shall lay down for infringements of this Regulation and of the measures referred to in Article 3 in particular by airspace users and service providers shall be effective, proportional and dissuasive.

Article 10

Consultation of stakeholders

1. The Member States, acting in accordance with their national legislation, shall establish consultation mechanisms for appropriate involvement of stakeholders, including professional staff representative bodies, in the implementation of the Single European Sky.
2. The Commission shall establish a consultation mechanism at Community level. 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.

The stakeholders may include:

- air navigation service providers;
- airport operators;
- all representative groups of airspace users;
- military authorities;
- manufacturing industries; and
- professional staff representative bodies.

Article 11

Performance scheme

1. To improve the performance of air navigation services and network functions in the Single European Sky, a performance scheme for air navigation services and network functions shall be set up. It shall include:
 - (a) Community-wide performance targets on the key performance areas of safety, environment, capacity and cost-efficiency;
 - (b) national **plans or plans for functional airspace blocks** ~~or regional performance plans~~, including performance targets, ensuring consistency with the Community-wide performance targets; and
 - (c) periodic review, monitoring and benchmarking of performance of air navigation services and network functions.

2. In accordance with the procedure referred to in Article 5(3), the Commission may designate Eurocontrol or another competent public entity to act as a performance review body. The role of the performance review body shall be to assist the Commission, in coordination with the NSAs, and to assist the NSAs on request in the implementation of the performance scheme referred to in paragraph 1. The Commission shall ensure that the performance review body acts independently when carrying out the tasks entrusted to it by the Commission.

Annex II - Framework Regulation (Regulation (EC) No 549/2004)

3. (a) The Community-wide performance targets shall be adopted by the Commission in accordance with the procedure referred to in article 5(3), after taking into account the relevant inputs from NSAs at national **level** or **at the level of functional airspace blocks** ~~regional level~~.
- (b) The national or **functional airspace block** ~~regional~~ plans referred to in paragraph 1(b) shall be elaborated by NSAs and adopted by the Member State(s). These plans shall include binding national **targets** or **targets at the level of functional airspace blocks** ~~or regional targets~~ and an appropriate incentive scheme as adopted by the Member State(s). Elaboration of the plans shall be subject to consultation with air navigation service providers, airspace users' representatives, and, where relevant, airport operators and airport coordinators.
- (c) The consistency of the national or **functional airspace block** ~~regional~~ targets with the community-wide performance targets shall be assessed by the Commission using the assessment criteria referred to in paragraph 6 (d).

In the event the Commission identifies that one or more national **or functional airspace block** ~~or regional set of performance~~ targets do not meet the assessment criteria, it may decide, in accordance with the procedure referred to in article 5(3), that the concerned NSAs shall elaborate revised performance targets. The Member State(s) concerned shall adopt these revised performance targets and appropriate measures which shall be notified to the Commission in due time.

Annex II - Framework Regulation (Regulation (EC) No 549/2004)

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

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

- (d) The reference period for the performance scheme shall cover a minimum of three years and a maximum of five years. During this period, in case the national **or functional airspace block** ~~or regional~~ targets are not met, the Member States and/or the NSAs shall apply the corrective measures they have defined.
 - (e) The Commission shall perform regular assessments of the achievement of the performance targets and present the results to the Single Sky Committee.
4. The following procedures shall apply to the performance scheme referred to in paragraph 1:
- (a) collection, validation, examination, evaluation and dissemination of relevant data related to performance of air navigation services and network functions from all relevant parties, including air navigation service providers, airspace users, airport operators, national supervisory authorities, Member States and Eurocontrol;

Annex II - Framework Regulation (Regulation (EC) No 549/2004)

- (b) selection of appropriate key performance areas on the basis of ICAO Document N°9854 'Global Air Traffic Management Operational Concept', including safety, environment, capacity and cost-efficiency areas, adapted where necessary in order to take into account the specific needs of the Single European Sky and relevant objectives for these areas and definition of a limited set of key performance indicators for measuring performance;
- (c) establishment of Community-wide performance targets that shall be defined taking into consideration inputs identified at national level or at the level of functional airspace blocks;
- (d) assessment of the national or **functional airspace block** ~~regional~~ performance targets on the basis of the national or **functional airspace block** ~~regional~~ plan;
- (e) monitoring of the national or **functional airspace block** ~~regional~~ performance plans, including appropriate alert mechanisms.

The Commission may add procedures to the list of the procedures referred to 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).

5. The establishment of the performance scheme shall take into account that en route services, terminal services and network functions are different and should be treated accordingly.

Annex II - Framework Regulation (Regulation (EC) No 549/2004)

6. For the detailed functioning of the performance scheme, the Commission shall adopt, at the latest two years following the entry into force of this Regulation, implementing rules in accordance with the procedure referred to in Article 5(3). These implementing rules shall cover the following:
- (a) the content of the procedures referred to in paragraph 4;
 - (b) the reference period and intervals for the assessment of the achievement of performance targets and setting of new targets;
 - (c) criteria for the setting up by the national supervisory authorities of the national or **functional airspace block** ~~regional~~ performance plans, containing the national or **functional airspace block** ~~regional~~ performance targets and the incentive scheme shall:
 - (i) be based on the business plans of the ANSPs;
 - (ii) address all cost components of the national or **functional airspace block** ~~regional~~ cost base;
 - (iii) include binding performance targets consistent with the Community-wide performance targets;
 - (d) criteria to assess whether the national or **functional airspace block** ~~regional~~ targets are consistent with the Community wide performance targets during the reference period and to support alert mechanisms;
 - (e) general principles for the setting up by Member States of the incentive scheme;
 - (f) a transitional period not exceeding the first reference period during which the provisions of Article 9 and, if appropriate, the incentive schemes referred to in paragraph 3 need not apply.

Article 12

Supervision, monitoring 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.
2. The Commission shall periodically review the application of this Regulation and of the measures referred to in Article 3, and shall report to the European Parliament and to the Council, on the first occasion by 20 April 2007, and every three years thereafter. 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.
3. For the purposes of drafting the reports referred to in paragraph 2, the Commission shall request the opinion of the Committee.
4. 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.

Article 13
Safeguards

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

- 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,
- in the event of serious internal disturbances affecting the maintenance of law and order,
- in the event of war or serious international tension constituting a threat of war,
- for the fulfilment of a Member State's international obligations in relation to the maintenance of peace and international security,
- in order to conduct military operations and training, including the necessary possibilities for exercises.

Annex II - Framework Regulation (Regulation (EC) No 549/2004)

Article 14

Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication 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, 10 March 2004.

Regulation (Regulation (EC) No 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.

Article 2

Tasks of national supervisory authorities

1. The national supervisory authorities referred to in Article 4 of the framework Regulation shall ensure 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.

Annex III - Service Provision Regulation (Regulation (EC) No 550/2004)

2. To this end, each national supervisory authority shall organise proper inspections and surveys to verify compliance with the requirements of this Regulation. The air navigation service provider concerned shall facilitate such work.
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.
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 the applicable common requirements set out in Article 6 or conditions set out in Annex II.

In the case of cross-border provision of air navigation services, such arrangements shall include an agreement on the mutual recognition of the supervisory tasks set out in paragraphs 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.

5. 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 3
Qualified entities ¹⁷

1. National supervisory authorities may decide to delegate in full or in part the inspections and surveys referred to in Article 2(2) to qualified entities that fulfil the requirements set out in Annex I.
2. A recognition granted by a national supervisory authority shall be valid within the Community for a renewable period of three years. National supervisory authorities may instruct any of the qualified entities located in the Community to undertake these inspections and surveys.

Article 4
Safety requirements

The Commission shall, in accordance with the 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.

Article 5
Licensing of controllers

[...]

¹⁷ AT: scrutiny reservation on the use of the term ‘*qualified entities*’ in this article.

CHAPTER II
RULES FOR THE PROVISION OF SERVICES

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 7
Certification of air navigation service providers

1. The provision of all air navigation services within the Community shall be subject to certification by Member States.
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.

Annex III - Service Provision Regulation (Regulation (EC) No 550/2004)

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.
4. 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 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.
6. 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.

Annex III - Service Provision Regulation (Regulation (EC) No 550/2004)

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 as far as safety is not compromised. Such measures may include the revocation of the certificate.
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.

Article 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 in the Community.
2. For the provision of cross-border services, Member States shall ensure that compliance with this article and Article 10(3) is not prevented by any national legal system requiring that air traffic service providers providing services in the airspace under the responsibility of that Member State:

Annex III - Service Provision Regulation (Regulation (EC) No 550/2004)

- (a) be owned directly or through a majority holding by that Member State or its nationals; or have their principal place of operation or registered office in the territory of that Member State; or
 - (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.¹⁸
3. Member States shall define the rights and obligations to be met by the designated 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.
4. Member States have discretionary powers in choosing a service provider, on condition that the latter fulfils the requirements and conditions referred to in Articles 6 and 7.

¹⁸

DE:

1. Replace paragraph 2 with the following: *‘For air navigation services in a functional airspace block a Member State shall not refuse to designate and air traffic service provider or to approve a working relationship between air navigation service providers in accordance with Article 10(3) on the grounds that its national legal system requires that the services provided by the air traffic service provider in the national airspace be put under the responsibility of that Member State.’*
2. Delete recital (12); renumber existing recital (13) as (12); add the following new recital (13): *‘For air navigation services in a functional airspace block, it should be clarified that Member States may not refuse to designate an air navigation service provider or to approve a working relationship between air navigation service providers on the grounds that it is established in another Member State or is owned by nationals of that Member State. This support of a proper exploitation of the concept of functional airspace blocks is without any prejudice to the consideration, that the provision of air traffic services 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.’*

Annex III - Service Provision Regulation (Regulation (EC) No 550/2004)

5. In respect of functional airspace blocks established in accordance with Article 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, 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 decisions 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.

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 9a

Functional Airspace Blocks

1. Member States shall take all necessary measures in order to ensure the establishment of functional airspace blocks by the end of 2012 or three years following the entry into force of this Regulation, whichever is the latest, 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 a reduced environmental impact. Member States shall cooperate with each other to the fullest extent possible in order to ensure compliance with this provision.

2. Functional airspace blocks shall, *in particular*:
 - (a) be supported by a safety case;

 - (b) enable optimum use of airspace, taking into account air traffic flows;

 - (ba) ensure consistency with the European route network established in accordance with Article 6 of Regulation 551/2004.

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

Annex III - Service Provision Regulation (Regulation (EC) No 550/2004)

- (d) ensure a smooth and flexible transfer of responsibility for air traffic control between air traffic service units;
 - (e) ensure compatibility between the different airspace configurations, optimising inter alia the current Flight Information Regions;
 - (f) comply with conditions stemming from regional agreements concluded within the ICAO; and
 - (g) respect regional agreements in existence on the date of entry into force of this Regulation, in particular those involving European third countries; and
 - (h) facilitate consistency with Community-wide performance targets.
3. A functional airspace block shall only be established by mutual agreement between all the Member States who have responsibility for any part of the airspace included in the functional airspace block, or by a declaration of one Member State if the airspace included in the block is wholly under its responsibility. 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.

Annex III - Service Provision Regulation (Regulation (EC) No 550/2004)

5. 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 3, the Member States shall take this opinion into account in order to find a solution.
- 5a. After having received the notifications by Member States of the agreements and declarations referred to in paragraphs 3 and 4 the Commission shall assess the fulfilment by each functional airspace block of the requirements set out in paragraph 2 and present the results to the Single European 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 to reach a consensus on the measures necessary to rectify the situation.
6. Without prejudice to paragraph 5a, the agreements and declarations referred to in paragraphs 3 and 4 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.
7. Guidance material¹⁹ for the establishment and modification of functional airspace blocks shall be developed by [date]²⁰ in accordance with the procedure referred to in Article 5 (2) of Regulation 549/2004.
- 7a. The Commission shall, by [date]²¹ and in accordance with the procedure referred to in Article 5(3) of Regulation 549/2004, 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.

¹⁹ ES: replace ‘*guidance material*’ with ‘*Community specifications*’.

²⁰ One year following entry into force of this Regulation.

²¹ Two years following entry into force of this Regulation.

Article 10

Relations between service providers

1. Air navigation service providers may avail themselves of the services of other service providers that have been certified in the Community.
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).

Article 11

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 in respect of the management of specific airspace blocks.

Article 12

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. 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.
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 14 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.
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 to air navigation service providers that fall within the scope of that Regulation.

Article 13

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 air navigation service providers, airspace users and airports on a non-discriminatory basis.
3. Certified 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. Detailed rules relating to such conditions shall be established, where appropriate, in accordance with the procedure referred to in Article 5(3) of the framework Regulation.

Article 14

General

In accordance with the requirements of Articles 15 and 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 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 15

Principles

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 shall be applied when establishing the cost-base for charges:
 - (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. Determined costs shall be the costs determined by the Member State at national or FAB level either at the beginning of the reference period for each calendar year of the reference period referred to in Article 11 of the framework Regulation, or during the reference period, following appropriate adjustments applying the alert mechanisms set out in Article 11 of Regulation 549/2004;
 - (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 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 according to Article 9 of the framework Regulation nor the costs of any corrective measures imposed by Member States according to Article 11 of the framework Regulation;

Annex III - Service Provision Regulation (Regulation (EC) No 550/2004)

- (c) The cost of different air navigation services shall be identified separately, as provided for in Article 12(3);
 - (d) 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. It shall be allowed between different air navigation services in either one of those two categories only when justified for objective reasons, subject to clear identification;
 - (e) 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.
3. Member States shall comply with the following principles when setting charges in accordance with paragraph 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;

Annex III - Service Provision Regulation (Regulation (EC) No 550/2004)

- (ba) 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;
 - (c) Air navigation services may produce sufficient revenues to provide for a reasonable return on assets to contribute towards necessary capital improvements;
 - (d) Charges shall reflect the cost of air navigation services and facilities made available to airspace users taking into account the relative productive capacities of the different aircraft types concerned;
 - (e) Charges shall encourage the safe, efficient, effective and sustainable provision of air navigation services with a view to a high level of safety and cost-efficiency and shall stimulate integrated service provision, whilst reducing the environmental impact of aviation. To that end, and in relation to the national or **functional airspace block regional** 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.
4. The Commission shall adopt detailed implementing rules for this Article in accordance with the procedure referred to in Article 5(3) of Regulation 549/2004.

Article 15a

Common projects²²

- 1. Common projects may assist the successful implementation of the ATM Master Plan. Such projects shall, furthermore, 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.**

- 2. The Commission may, in accordance with the procedure referred to in Article 5 (3) of Regulation 549/2004, 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 projects in relation with a functional airspace block as agreed upon by the partners of those blocks.**

²² The Presidency suggests this new text based on the discussion in Coreper.

Article 16

Review of charges

1. The Commission shall provide for the ongoing review of compliance with the principles and rules referred to in Articles 14 and 15, 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. Without prejudice to Article 18(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 and after consulting the Single Sky Committee in accordance with the procedure referred to in Article 5(2) of the framework Regulation, the Commission shall take a decision on the application of Articles 14 and 15 and as to whether the practice concerned may continue.

Annex III - Service Provision Regulation (Regulation (EC) No 550/2004)

3. The Commission shall address its decision to the Member States and inform the service provider thereof, insofar 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.

23

²³ CION suggests the addition of an article to ensure reciprocal access to the airspace of Member States for carriers of third countries:

*'Article 16a
Reciprocity*

Access to the airspace of the Member States [and the conditions applicable thereto] shall be granted on the basis of reciprocity and in compliance with international law.'

CHAPTER IV
FINAL PROVISIONS

Article 17

Revision of Annexes

The 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.

Article 18

Confidentiality

(revert to 2004 text)

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 14 shall be publicly disclosed.

Annex III - Service Provision Regulation (Regulation (EC) No 550/2004)

Article 18a

Review

1. The Commission shall submit a report to the European Parliament and the Council no later than [date]²⁴, **covering all aspects of the performance scheme and** accompanied, where appropriate, by a proposal taking into account the necessary amendments to be made to the current regulation.

Article 19

Entry into force

1. This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.
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, 10 March 2004.

²⁴ Four years following entry into force of this Regulation.

The airspace Regulation (Regulation (EC) No 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).
3. Without prejudice to Article 10, this Regulation shall apply to the airspace within the ICAO EUR and AFI regions where Member States are responsible for the provision of air traffic services in accordance with the service provision 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.
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.

Article 2
Division level

[...]

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 within two years after the entry into force of this Regulation.
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.

Article 3a

Electronic Aeronautical information

1. Without prejudice to the publication by Member States of aeronautical information and in a manner consistent with this publication, the Commission, working in cooperation with Eurocontrol, 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-wide aeronautical information infrastructure in the form of an electronic integrated briefing portal with unrestricted access to interested stakeholders. This 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 ICAO.
3. The Commission shall adopt detailed implementing rules for this Article in accordance with the procedure referred to in article 5(3) of Regulation 549/2004.

Article 4

Rules of the air and airspace classification

The Commission shall, in accordance with the procedure referred to in Article 5 (3) of Regulation 549/2004, 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.

Article 5

Reconfiguration of the upper airspace

[This Article is moved and slightly changed in new Article 9a of the service provision Regulation]

Article 6

Network management and design

1. The air traffic management (ATM) network functions 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 shall be aimed at supporting initiatives at national **level** and **at the level of functional airspace blocks** ~~regional level~~.
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 are carried out:
 - (a) design of the European route network; and
 - (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.

Annex IV - Airspace Regulation (Regulation (EC) No 551/2004)

The above functions 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.

The Commission may, after consultation of the Single Sky Committee and in conformity with the implementing rules referred to in paragraph 4, entrust to Eurocontrol the tasks necessary for the execution of the above functions. These tasks shall be executed in an impartial and cost-effective manner and performed on behalf 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.

3. The Commission may add functions to the list of the functions listed in paragraph 2 after proper consultation of industry stakeholders. These measures designed to amend non-essential elements of this Article by supplementing it, shall be adopted in accordance with the procedure referred to in Article 5(4) of Regulation 549/2004.

Annex IV - Airspace Regulation (Regulation (EC) No 551/2004)

4. Detailed rules for the implementation of the measures referred to in this article, except for those referred to in paragraphs 6 to 9, shall be adopted in accordance with Article 5(3) of Regulation 549/2004. These implementing rules shall address in particular:
- (a) coordination and harmonisation of processes and procedures to enhance the efficiency of aeronautical frequency management including the development of principles and criteria;
 - (b) central function to co-ordinate the early identification and resolving 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 as defined in the ATM Master Plan;
 - (d) modalities for co-operative decision-making between the Member States, the air navigation service providers and the network management function for the tasks referred to in paragraph 2;
 - (e) arrangements for consultation of the relevant stakeholders in the decision-making process both at national and European levels; and
 - (f) **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 continue to perform those 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.**²⁵

²⁵ The Presidency suggests the new text in order to meet concerns expressed regarding this paragraph and paragraph 2 (b).

Annex IV - Airspace Regulation (Regulation (EC) No 551/2004)

5. Other aspects of airspace design than those referred to in paragraph 2 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 and include full consultation of all groups of airspace users concerned.
6. Member States shall entrust Eurocontrol with the performance of air traffic flow management.
7. Implementing rules for air traffic flow management, including the necessary oversight arrangements, shall be developed in accordance with the procedure referred to in Article 8 of Regulation 549/2004 and adopted in accordance with Article 5(3) of Regulation 549/2004, 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.
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.

Annex IV - Airspace Regulation (Regulation (EC) No 551/2004)

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.

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.

Article 9

[...]

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 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.

Article 11

Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication 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, 10 March 2004.

The interoperability Regulation (Regulation (EC) No 552/2004)

CHAPTER I
GENERAL PROVISIONS

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](#).

CHAPTER II

**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.
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

Annex V - Interoperability Regulation (Regulation (EC) No 552/2004)

- (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.
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 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 subparagraph 1(a) in the Official Journal of the European Union.

Annex V - Interoperability Regulation (Regulation (EC) No 552/2004)

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 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.

Article 6a

Alternative verification of compliance

A certificate issued in accordance with Regulation (EC) No 216/2008, where it applies to constituents or systems, shall be considered, for 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 demonstration of compliance with the essential requirements of this Regulation and the relevant implementing rules for interoperability.

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.

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.

Annex V - Interoperability Regulation (Regulation (EC) No 552/2004)

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.

Article 8

Notified bodies

1. Member States shall notify the Commission and the other Member States of the bodies 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 body's area of responsibility and its identification number obtained from the Commission. The Commission shall publish in the Official Journal of the European Union the list of 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.

Annex V - Interoperability Regulation (Regulation (EC) No 552/2004)

3. Member States shall withdraw notification of a notified body which no longer meets the criteria provided for in Annex V. It shall forthwith inform the Commission 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.

CHAPTER IV
FINAL PROVISIONS

Article 9

Revision of Annexes

The 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.

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.
- 2a. For the purposes of paragraph 2, **Member States may declare** systems and constituents of the EATMN ~~as shall be deemed~~ compliant with the essential requirements and exempt from the provisions of articles 5 and 6 ~~unless determined otherwise in the relevant implementing rules for interoperability.~~²⁶

²⁶ The new text aims to clarify the situation with regard to compliance of ‘legacy systems’ with the essential requirements.

Annex V - Interoperability Regulation (Regulation (EC) No 552/2004)

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,
- 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.

Article 11

Repeal

Directives 93/65/EEC and 97/15/EC and Regulations (EC) Nos 2082/2000 and 980/2002 shall be repealed on 20 October 2005.

Annex V - Interoperability Regulation (Regulation (EC) No 552/2004)

Article 12

Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication 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, 10 March 2004.

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.

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*

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

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*

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

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.

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.

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.

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.

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.

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.

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,

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.

NOTIFIED BODIES

1. The body, its Director and the staff responsible for carrying out the checks may not become 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 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 their judgment or the results of 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.
4. The staff 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 impartiality of the inspection staff must be guaranteed. Their remuneration must not depend on the number of inspections carried out or on the results of such inspections.
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.
 - 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.
