OPINION OF THE COMMISSION

pursuant to Article 251 (2), third subparagraph, point (c) of the EC Treaty,
on the European Parliament's amendments
to the Council's common position regarding the
proposals for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
laying down the framework for the creation of the Single European Sky

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
on the provision of air navigation services in the Single European Sky

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
on the organisation and use of the airspace in the Single European Sky

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
on the interoperability of the European Air Traffic Management network

AMENDING THE PROPOSALS OF THE COMMISSION
pursuant to Article 250 (2) of the EC Treaty
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1. INTRODUCTION

Article 251(2), third subparagraph, point (c) of the EC Treaty provides that the Commission is
to deliver an opinion on the amendments proposed by the European Parliament at second
reading. The Commission sets out its opinion below on the amendments proposed by
Parliament.

2. BACKGROUND

a) On 10 October 2001 the Commission submitted four legislative proposals for the creation of the Single European Sky with a view to their adoption under the codecision procedure provided for in Article 251 of the Treaty establishing the European Community.

b) The Committee of the Regions delivered an opinion supporting the Commission’s proposals on 15 May 2002.

c) The European Economic and Social Committee delivered an opinion supporting the Commission’s proposals on 17 July 2002.

d) On 3 September 2002 the European Parliament, at its first reading, delivered its opinion, containing 113 amendments to the Commission proposals.


g) On 3 July 2003, the European Parliament adopted, at the second reading, two resolutions containing 50 amendments to the common position.

3. OBJECTIVES OF THE COMMISSION’S PROPOSALS

The air traffic control system in the Community operates close to its capacity limits. It is therefore a source of delays in air traffic. Delays make air transport unpredictable for air passengers and operators and impose large economic costs on carriers and consumers. The lack of capacity of the air traffic control system also endangers the functioning of the internal market. The main origin of this lack is the fragmentation of the Air Traffic Management (ATM) system which also results in high co-ordination costs. There is consequently a need to improve the interoperability of the system among various Member States.

To remedy these deficiencies, the Commission adopted in October 2001 a legislative package with the objective of achieving the goal of a Single European Sky. The objectives of the proposed legislation are:

– to improve and reinforce safety,
– to achieved more effective and integrated air navigation services based on demand driven service provision,
– to restructure European airspace as a function of traffic flow, rather than according to national borders,
– to create additional capacity and to increase the overall efficiency of the ATM system.

The Commission’s legislative package comprises four proposals for regulation covering the essential elements for a seamless ATM system.

3.1 Regulation of the European Parliament and of the Council laying down the framework for the creation of the Single European Sky (2001/0060 (COD))

This proposal for a regulation fixes the end of 2004 as the deadline for the creation of the Single European Sky. It proposes an institutional framework for the creation of the Single European Sky. According to this framework the Community regulates, Eurocontrol, where appropriate, prepares draft measures with a view to being incorporated into Community law, and Member States enforce the rules without prejudice to the role of the Commission as the guardian of the Treaty. This regulation
also proposes to significantly enhance international co-ordination. The institutional set up aims at removing the administrative and organisational bottlenecks in the area of decision-making and enforcement processes in ATM.

3.2 Regulation of the European Parliament and of the Council on the provision of air navigation services in the Single European Sky (2001/0235 (COD))

This proposal for a regulation aims to promote the safe and efficient provision of air navigation services in a seamless and interoperable manner across the Community. It ensures a functional separation between national supervisory authorities and air navigation service providers. This separation is compatible with both public and private means of ownership and service provision – whichever model is adopted by individual Member States. Eurocontrol safety requirements would be transposed into Community rules. The regulation introduces a certification scheme for air navigation services setting the harmonised requirements for their provision at Community level. Member States would retain their power to designate service providers operating under monopoly conditions (air traffic control services). The regulation also allows the revision of the current charging system to encourage the efficient use and the efficient provision of ATM infrastructure.

3.3 Regulation of the European Parliament and of the Council on the organisation and use of the airspace in the Single European Sky (2001/0236 (COD))

This proposal for a regulation would create a Community airspace that behaves as a single operating continuum, where common procedures for the design, planning and management of airspace ensure the safe performance of the entire air traffic management network. The regulation defines the principles for the organisation and use of the airspace, for the co-ordination between civil and military and for the management of air traffic flows. Its most significant actions would be the creation of a European Upper Information Region, replacing the existing national zones, and the reconfiguration of airspace into functional airspace blocks of adequate size, based on safety and efficiency criteria, regardless of national boundaries.

3.4 Regulation of the European Parliament and of the Council on the interoperability of the European Air Traffic Management network (2001/0237 (COD))

This proposal for a regulation defines the conditions necessary to ensure interoperability in the Community between the different systems and components of the air traffic management network and of their upgrading to new technologies, as appropriate. A key pillar of this regulation is the definition and management of the European ATM standardisation processes, including the procedures for conformity assessment, in line with the Community policies in this field.
4. **Opinion of the Commission on the Amendments by the European Parliament**

4.1 **Regulation of the European Parliament and of the Council laying down the framework for the creation of the Single European Sky (2001/0060 (COD))**

The European Parliament adopted at second reading 18 amendments to the Common Position of the Council.

The Commission can accept 5 amendments in full, 6 in principle, subject to redrafting.

It has nonetheless to reject 7 amendments in full.

4.1.1 **Amendments accepted by the Commission (5 amendments in full)**

The Commission believes that amendments 2, 5, 16, 17 and 18 constitute genuine improvements and useful clarifications in the text.

4.1.1.1 **Genuine improvements (2 amendments in full)**

Amendment 5 and amendment 18 delete the reference to military training exercises respectively in recital 19 and in the safeguard clause (Article 11, indent 5). The Commission believes that such reference is superfluous. The concepts of the organisation of armed forces and of military operations in the provisions of recital 19 and Article 11 of the Common Position already cover training aspects. Furthermore the scope of the legislative package, as defined in Article 1, excludes any measures of the legislation in the field of military operations and training, namely with regard to air traffic flown under military rules (OAT = Operational Air Traffic). These amendments will also help clarifying the scope of Articles 7 and 8 in the “airspace” regulation concerning the flexible use of airspace. Airspace has a dual-use as it can be used for both civil and military purposes. The dual-use of airspace, whether for civil flights or military training, is within the scope of the legislative package with a view to make it really flexible and efficient and subject to effective control.

4.1.1.2 **Useful clarifications (3 amendments in full)**

Amendment 2 (on recital 9) extends the notion of public authorities subject to the principle of separation between regulatory and operational functions to all air navigation services. The Commission can accept it provided that the list of services (into brackets) is deleted since in contradiction with the definition of air navigation services under Article 2.

Amendments 16 and 17 (on Articles 9 and 10) add new text, which clarifies the scope of the review of performance and impact assessment.
4.1.2 Amendments accepted in principle, subject to redrafting (6 amendments)

Amendment 3 and 12 (new recital and article) stress the importance of involving industry to get advice on the implementation of the Single European Sky and, to this purpose, introduce the concept of an industry advisory group. The Commission agrees on the need for a full and effective consultation of industry. Hence the Commission can accept to reinforce the principle of consultation and dialogue with industry in accordance with its Communication of 11.12.2002 (COM(2002) 704 final). As to the creation of a body, a re-drafting is required to avoid any prejudice to the right of initiative of the Commission and the role of the Single Sky Committee.

Amendments 4 and 15 (new recital and Article). The Commission is in favour of introducing a mechanism to sanction operators that breach the rules. Nevertheless this mechanism should be defined in a uniform way across the Community and linked to the obligations imposed on air carriers and service providers.

Amendment 6 (on Article 1) reinstates the text of the Commission’s proposal concerning the scope of the “framework” regulation. The Commission agrees that the scope of the Community action should be clearly spelt out before defining the limits of such actions in relation to Member States’ sovereignty over national airspace and to the defence policy. This amendment could therefore be accepted in parallel with the text of the Common Position of the Council.

Amendment 7 (on Article 2) clarifies that the legal statute of service providers is a choice of Member States. This clause appears indeed to be superfluous since the legislative package does not provide on this issue.

4.1.3 Amendments rejected by the Commission (7 amendments in full)

The Commission believes that amendments 1, 8, 9, 10, 11, 13 and 14 are contrary to the basic principles and philosophy of its proposal.

Amendment 1 (on recital 3) limits the aim of air navigation services to the protection of passengers and residents. This drafting would negate the principal role of air navigation services in supporting the smooth and safe operations of air transport, which is unacceptable.

Amendments 8 and 9 (on Article 2) modify the definitions of “air traffic flow management” and “sector”. These definitions stem from the ICAO glossary which the accepted reference in the air traffic management community. Thus the amendments are rejected.

Amendments 10 and 11 (on Article 5) introduce a reference to the “military” dimension of the Single Sky Committee and to the participation of Eurocontrol at such a committee. The drafting of these amendments does not conform to Decision 1999/468/CE on comitology and the associated rules of procedures. The Commission cannot therefore accept these amendments.

Amendment 13 (on Article 6) requires the Commission to act consistently for the extension of the Single European Sky to the largest European scale. However this goal would finally depend on the whole Community action, including the Commission. The drafting proposed is incomplete and therefore unacceptable.
Amendment 14 (on Article 7) requires the Commission to make use of Eurocontrol working procedures, including its consultation processes, in the development of implementing rules. These procedures should be specified in the context of the mandates for the development of implementing rules. This is in particular to guarantee the conformity with the Commission’s procedures on the consultation of stakeholders and the absence of conflict of interest. The Commission cannot accept this amendment.

4.2 Regulation of the European Parliament and of the Council on the provision of air navigation services in the Single European Sky (2001/0235 (COD))

The European Parliament adopted at second reading 16 amendments to the Common Position of the Council.

The Commission can accept 6 amendments in full, 8 in principle (one of which in part), subject to redrafting.

It has nonetheless to reject 2 amendment in full and 1 in part.

4.2.1 Amendments accepted by the Commission (6 amendments in full)

The Commission believes that amendments 3, 9, 10, 11, 12 and 14 constitute genuine improvements and useful clarifications in the text.

4.2.1.1 Genuine improvements (2 amendments in full)

Amendment 3 (new recital) supports the concept of a flexible definition of route charges to allow the constitution of financial reserves. These would relieve airspace users and service providers from unexpected rises in the charges as a consequence of sudden downturn in air traffic.

Amendment 12 (on Article 10) reinstate the text of the Commission’s proposal concerning mandatory information from Member States to the Commission on the modalities for the civil-military co-operation in air traffic control. The Commission believes that this provision is consistent with the scope of the legislative package since addressing arrangements imposed on air navigation services to respond to military requirements.

4.2.1.2 Useful clarifications (4 amendments in full)

Amendment 9 (on Article 6) adds new text, which clarifies the nature and scope of conditions attached to certificates.

Amendment 10 (on Article 7) specifies the period within which Member States should designate one or more service providers to operate in respect of functional airspace blocks.

Amendments 11 and 14 (on Article 7 and 14) are editorial improvements.
4.2.2 Amendments accepted in principle, subject to redrafting (7 amendments – 1 in part)

Amendments 1 and 4 (new recital and article) aims at reintroducing in the text the social dimension, in particular the need for a legislative action to improve the availability of controllers and to harmonise procedures for licensing of controllers. The Commission can accept these amendments subject to redrafting.

Amendments 2 and 8 (on recital 9 and Article 6) establish a maximum and minimum period of validity of certificates respectively of ten and five years. The Commission prefers that this period is fixed by Member States within the conditions to be attached to certificates (annex II). However, it supports the idea that these periods should be harmonised across the Community.

Amendments 5, 6 and 7 (on Article 5) add new text to clarify the scope of common requirements. Though acceptable in principle, these additions would highlight specific aspects of common requirements. They need therefore redrafting to ensure that there is no unbalance in the identification of various areas where common requirements should be developed.

Amendment 15, 1st part (on Article 14) reinstate the text of the Commission’s proposal concerning economic regulation, in particular financial incentives. The Commission does not see major contradictions between the Common Position and the proposed text, except for the right given to Member States to decide on the application of such incentives.

4.2.3 Amendments rejected by the Commission (2 amendments in full – 1 in part)

The Commission believes that amendments 13, 15.2nd part and 16 are contrary to the basic principles and philosophy of its proposal.

Amendment 13 (on Article 12) introduces the principles of commercial value of operational data. The application of this principle should be decided on a case by case basis. Some operational data are in fact provided free of charge, in accordance with ICAO provisions. The Commission cannot therefore accept this amendment.

Amendment 15, 2nd part (on Article 14) limits the cross-subsidies between air navigation services to exceptional cases. Cross-subsidies primarily concerns the definition of the cost-bases and specific rules are already provided for in Article 14.2(d) of the Common Position.

Amendment 16 (on Article 18) deletes the transitional period for the entry into force of the certification scheme. However this transitional period is needed. It depends on the availability of common requirements and it allows service providers to adapt to such requirements.

The European Parliament adopted at second reading 15 amendments to the Common Position of the Council.

The Commission can accept 8 amendments in full, 5 in principle, subject to redrafting.

It has nonetheless to reject 2 amendment in full.

4.3.1 Amendments accepted by the Commission (8 amendments in full)

The Commission believes that amendments 17, 18, 19, 20, 21, 22, 24 and 28 constitute important changes of substance, genuine improvements and useful clarifications in the text.

4.3.1.1 Changes of substance (2 amendments)

Amendment 24 (new Article) reinstates the text of the Commission’s proposal aimed at extending the concept of the European Flight Information Region to the lower airspace.

Amendment 28 (new Article) extends the concept of functional airspace blocks to lower airspace. This amendment could be accepted subject to drafting changes.

4.3.1.2 Genuine improvements (1 amendment in full)

Amendment 21 (on recital 12) clarifies that the creation of functional airspace blocks requires taking into account, as appropriate the recommendations of Eurocontrol. It can therefore be accepted subject to redrafting.

4.3.1.3 Useful clarifications (5 amendments in full)

Amendments 17, 18, 19, 20, 22 (on recital 2, 3, 6, 9 and Article 1) add new text and/or delete some text thereby clarifying the spirit of regulation.

4.3.2 Amendments accepted in principle, subject to redrafting (5 amendments)

Amendment 23 (on Article 3) sets an obligation of result within a certain period of time. However, as the establishment of the European Upper Flight Information Region depends on an ICAO decision, it is more appropriate to set this obligation upon the Commission to initiate the process within a specific timeframe.

Amendment 26 (on Article 5) defines an arbitration process governed by the Commission to solve disputes in relation to the establishment of functional airspace blocks. The Common Position does not provide for mechanisms to ensure that decisions of Member States on this issue will lead the timely and efficient reconfiguration of air traffic services into few homogeneous blocks. The Commission can therefore accept the principle of a process of consultation within the Single Sky Committee to discuss on the consistency of individual functional airspace blocks in respect of the neighbouring blocks.
Amendment 27 (new Article) clarifies that the modalities of the process of airspace and route design. The Commission agrees on these modalities which are, to a great extent, already in existence. This amendment is therefore superfluous.

Amendment 30 (on Article 8) provides for an information to the Commission on the application of the concept of the flexible use of airspace. The Commission can accept this amendment whose objective is already covered by Article 7.2 of the common position.

Amendment 31 (on Article 10) deletes the provisions of the Common Position concerning the review process and the possible extension of the concept of this regulation to the lower airspace. This deletion is dependent upon the inclusion of similar provisions in conjunction with amendment 28.

4.3.3 Amendments rejected by the Commission (2 amendments in full)

The Commission believes that amendments 25 and 29 are contrary to the basic principles and philosophy of its proposal.

Amendment 25 (on Article 4) links the change in the classification of airspace to the creation of the European Upper Flight Information Region and it specifies the nature of such classification. This level of detail is unacceptable.

Amendment 29 (on Article 7) reinstates the text of the Commission’s proposal on the civil-military co-ordination. This wording no longer fits in with the text of the Common Position and its legal basis, given the impact it has on military operations and training.


The European Parliament adopted at second reading 1 amendment to the Common Position of the Council.

The Commission can accept this amendment in part.

4.4.1 Amendments accepted by the Commission (1 amendments in part)

Amendment 32, 2nd part (on Article 10) constitutes an improvement since it requires speeding up the process of conformity of all systems with the essential requirements.

4.4.2 Amendments rejected by the Commission (1 amendments in part)

Amendment 32, 1st part (on Article 10) is unacceptable since the application of essential requirements requires a transitional period during which implementing rules and Community specifications will have to be established.

5. Conclusion

Pursuant to Article 250(2) of the EC Treaty, the Commission amends its proposal as set out above.