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(Acts whose publication is obligatory)

REGULATION (EC) No 549/2004 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**of 10 March 2004****laying down the framework for the creation of the single European sky****(the framework Regulation)****(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 ⁽¹⁾,

Having regard to the opinion of the European Economic and Social Committee ⁽²⁾,

Having regard to the opinion of the Committee of the Regions ⁽³⁾,

Acting in accordance with the procedure laid down in Article 251 of the Treaty ⁽⁴⁾, in the light of the joint text approved by the Conciliation Committee on 11 December 2003,

Whereas:

- (1) Implementation of the common transport policy requires an efficient air transport system allowing safe and regular operation of air transport services, thus facilitating the free movement of goods, persons and services.
- (2) At its Extraordinary Meeting in Lisbon on 23 and 24 March 2000, the European Council called on the Commission to put forward proposals on airspace

management, air traffic control and air traffic flow management, based on the work of the High Level Group on the single European sky set up by the Commission. This Group, made up largely of the civil and military air navigation authorities in the Member States, submitted its report in November 2000.

- (3) Smooth operation of the air transport system requires a consistent, high level of safety in air navigation services allowing optimum use of Europe's airspace and a consistent, high level of safety in air travel, in keeping with the duty of general interest of air navigation services, including public service obligations. It should therefore be carried out to the highest standards of responsibility and competence.
- (4) The single European sky initiative should be developed in line with the obligations stemming from the membership of the Community and its Member States of Eurocontrol, and in line with the principles laid down by the 1944 Chicago Convention on International Civil Aviation.
- (5) Decisions relating to the content, scope or carrying out of military operations and training do not fall within the sphere of competence of the Community.
- (6) The Member States have adopted a general statement on military issues related to the single European sky ⁽⁵⁾. According to this statement, Member States should, in particular, enhance civil-military cooperation and, if and

⁽¹⁾ OJ C 103 E, 30.4.2002, p. 1.

⁽²⁾ OJ C 241, 7.10.2002, p. 24.

⁽³⁾ OJ C 278, 14.11.2002, p. 13.

⁽⁴⁾ Opinion of the European Parliament of 3 September 2002 (OJ C 272 E, 13.11.2003, p. 296), Council common position of 18 March 2003 (OJ C 129 E, 3.6.2003, p. 1) and position of the European Parliament of 3 July 2003 (not yet published in the Official Journal). Legislative resolution of the European Parliament of 29 January 2004 and Decision of the Council of 2 February 2004.

⁽⁵⁾ See page 9 of this Official Journal.

to the extent deemed necessary by all Member States concerned, facilitate cooperation between their armed forces in all matters of air traffic management.

Eurocontrol, after the accession by the Community to Eurocontrol, or by means of agreements concluded by the Community with these countries.

- (7) Airspace constitutes a limited resource, the optimum and efficient use of which will be possible only if the requirements of all users are taken into account and where relevant, represented in the whole development, decision-making process and implementation of the single European sky, including the Single Sky Committee.
- (8) For all these reasons, and with a view to extending the single European sky to include a larger number of European States, the Community should, while taking into account the developments occurring within Eurocontrol, lay down common objectives and an action programme to mobilise the efforts by the Community, the Member States and the various economic stakeholders in order to create a more integrated operating airspace: the single European sky.
- (9) Where Member States take action to ensure compliance with Community requirements, the authorities performing verifications of compliance should be sufficiently independent of air navigation service providers.
- (10) Air navigation services, in particular air traffic services which are comparable to public authorities, require functional or structural separation and are organised according to very different legal forms in the various Member States.
- (11) Where independent audits are required relating to providers of air navigation services, inspections by the official auditing authorities of the Member States where those services are provided by the administration, or by a public body subject to the supervision of the abovementioned authorities, should be recognised as independent audits, whether the audit reports drawn up are made public or not.
- (12) It is desirable to extend the single European sky to European third countries, either within the framework of participation by the Community in the work of
- (13) The accession of the Community to Eurocontrol is an important component in the creation of a pan-European airspace.
- (14) In the process of creating the single European sky, the Community should, where appropriate, develop the highest level of cooperation with Eurocontrol in order to ensure regulatory synergies and consistent approaches, and to avoid any duplication between the two sides.
- (15) In accordance with the conclusions of the High Level Group, Eurocontrol is the body that has the appropriate expertise to support the Community in its role as regulator. Accordingly, implementing rules should be developed, for matters falling within the remit of Eurocontrol as a result of mandates to that organisation, subject to the conditions to be included in a framework of cooperation between the Commission and Eurocontrol.
- (16) The drafting of the measures necessary in order to create the single European sky requires broad-based consultations of economic and social stakeholders.
- (17) The social partners should be informed and consulted in an appropriate way on all measures having significant social implications. The Sectoral Dialogue Committee set up under Commission Decision 1998/500/EC of 20 May 1998 on the establishment of Sectoral Dialogue Committees promoting the dialogue between the social partners at European level ⁽¹⁾ should also be consulted.
- (18) Stakeholders such as air navigation service providers, airspace users, airports, manufacturing industry and professional staff representative bodies should have the possibility to advise the Commission on technical aspects of the implementation of the single European sky.
- (19) The performance of the air navigation services system as a whole at European level should be assessed on a regular basis, with due regard to the maintenance of a
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- ⁽¹⁾ OJ L 225, 12.8.1998, p. 27.

high level of safety, to check the effectiveness of the measures adopted and to propose further measures.

- (20) The sanctions provided for with respect to infringements of this Regulation and of the measures referred to in Article 3 should be effective, proportional and dissuasive, without reducing safety.
- (21) The impact of the measures taken to apply this Regulation should be evaluated in the light of reports to be submitted regularly by the Commission.
- (22) This Regulation does not affect the power of Member States to adopt provisions in relation to the organisation of their armed forces. This power may lead Member States to adopt measures to ensure that their armed forces have sufficient airspace for adequate education and training purposes. Provision should therefore be made for a safeguards clause to enable this power to be exercised.
- (23) Arrangements for greater cooperation over the use of Gibraltar airport were agreed in London on 2 December 1987 by the Kingdom of Spain and the United Kingdom in a joint declaration by the Ministers of Foreign Affairs of the two countries. Such arrangements have yet to enter into operation.
- (24) Since the objective of this Regulation, namely the creation of the single European sky, cannot be sufficiently achieved by the Member States, by reason of the transnational scale of the action, and can therefore be better achieved at Community level, while allowing for detailed implementing rules that take account of specific local conditions, the Community may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve this objective.
- (25) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission ⁽¹⁾.
- (26) Article 8(2) of the Standard Rules of Procedure for committees ⁽²⁾ established in application of Article 7(1) of Decision 1999/468/EC provides a standard rule

according to which the Chairman of a committee may decide to invite third parties to a meeting of that committee. If appropriate, the Chairman of the Single Sky Committee should invite representatives of Eurocontrol to take part in meetings as observers or experts,

HAVE ADOPTED THIS REGULATION:

Article 1

Objective and scope

1. The objective of the single European sky initiative is to enhance current safety standards and overall efficiency for general air traffic in Europe, to optimise capacity meeting the requirements of all airspace users and to minimise delays. In pursuit of this objective, the aim of this Regulation is to establish a harmonised regulatory framework for the creation of the single European sky by 31 December 2004.

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.

4. The application of this Regulation and of the measures referred to in Article 3 to the airport of Gibraltar is understood to be without prejudice to the respective legal positions of the Kingdom of Spain and the United Kingdom with regard to the dispute over sovereignty over the territory in which the airport is situated.

5. Application of this Regulation and of the measures referred to in Article 3 to Gibraltar airport shall be suspended until the arrangements included in the Joint Declaration made by the Foreign Ministers of the Kingdom of Spain and the United Kingdom on 2 December 1987 enter into operation. The Governments of Spain and the United Kingdom will inform the Council of such date of entry into operation.

⁽¹⁾ OJ L 184, 17.7.1999, p. 23.

⁽²⁾ OJ C 38, 6.2.2001, p. 3.

*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;
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 all 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' 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);
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;
14. 'bundle of services' means two or more air navigation services;
15. 'certificate' means a document issued by a Member State 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;

⁽¹⁾ See page 33 of this Official Journal.

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. 'Eurocontrol's principles for establishing the cost-base for route facility charges and the calculation of unit rates' means the principles as specified in document No 99.60.01/01 of 1 August 1999, issued by Eurocontrol;
22. 'flexible use of airspace' means an airspace management concept applied in the European Civil Aviation Conference area, as specified in the first edition of 5 February 1996 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 1 013,2 hectopascals and is separated from other such surfaces by specific pressure intervals;
25. 'functional airspace block' means an airspace block based on operational requirements, reflecting the need to ensure more integrated management of the airspace regardless of existing boundaries;
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;
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;
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. 'sector' means part of a control area and/or a flight information region/upper region;
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.

⁽¹⁾ Convention modified by the protocol of 12 February 1981 and revised by the protocol of 27 June 1997.

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

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

2. The national supervisory authorities shall be 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. Member States shall ensure that national supervisory authorities exercise their powers impartially and transparently.

⁽¹⁾ See page 20 of this Official Journal.

⁽²⁾ See page 10 of this Official Journal.

⁽³⁾ See page 26 of this Official Journal.

3. 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 paragraph 2.

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. The Committee shall adopt its rules of procedure.

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, airports, the manufacturing industry and professional staff representative bodies shall belong. The role of this body shall be solely to advise the Commission on technical aspects of 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

Implementing rules

1. For the development of implementing rules pursuant to Article 3 which fall within the remit of Eurocontrol, the Commission shall issue mandates to Eurocontrol setting out the tasks to be performed and the timetable therefor. In this connection, it shall endeavour to make best use of the arrangements of Eurocontrol 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. The Commission shall act in accordance with the procedure referred to in Article 5(2).

2. On the basis of the work completed pursuant to paragraph 1, decisions regarding the application of the results of such work within the Community and the deadline for their implementation shall be taken in accordance with the procedure referred to in Article 5(3). These decisions shall be published in the *Official Journal of the European Union*.

3. Notwithstanding paragraph 2, if Eurocontrol cannot accept a mandate that was issued to it under paragraph 1, or if the Commission, in consultation with the Committee, considers that

(a) the work carried out on the basis of such mandate is not progressing satisfactorily given the deadline set, or

(b) the results of the work carried out are not adequate,

the Commission, acting in accordance with the procedure referred to in Article 5(3), may adopt alternative measures to achieve the objectives of the mandate concerned.

4. For the development of implementing rules pursuant to Article 3 which fall outside the remit of Eurocontrol, the Commission shall act in accordance with the procedure referred to in Article 5(3).

Article 9

Sanctions

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

Article 10

Consultation of stakeholders

The Member States, acting in accordance with their national legislation, and the Commission shall establish consultation mechanisms for appropriate involvement of stakeholders in the implementation of the single European sky.

Such stakeholders may include:

- air navigation service providers,
- airspace users,
- airports,
- manufacturing industry, and
- professional staff representative bodies.

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

Article 11

Performance review

1. The Commission shall ensure the examination and evaluation of air navigation performance, drawing upon the existing expertise of Eurocontrol.

2. The analysis of the information collected for the purposes of paragraph 1 aims at:

- (a) allowing the comparison and improvement of air navigation service provision;
- (b) assisting air navigation service providers to deliver the required services;
- (c) improving the consultation process between airspace users, air navigation service providers and airports;
- (d) allowing the identification and the promotion of best practice, including improved safety, efficiency and capacity.

3. Without prejudice to the public's right of access to the Commission's documents as laid down in Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European

Parliament, Council and Commission documents ⁽¹⁾, the Commission shall adopt, in accordance with the procedure referred to in Article 5(3), measures for the dissemination to interested parties of the information referred to in paragraph 2.

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, 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.

Article 14

Entry into force

This Regulation shall enter into force on the 20th 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.

For the European Parliament

The President

P. COX

For the Council

The President

D. ROCHE

⁽¹⁾ OJ L 145, 31.5.2001, p. 43.

STATEMENT BY THE MEMBER STATES ON MILITARY ISSUES RELATED TO THE SINGLE EUROPEAN SKY

The Member States,

- taking into account that the Regulations aimed at creating the single European sky apply only to general air traffic and do not cover military operations and training,
- affirming the necessity to put into practice the legislative framework for the single European sky in a coherent and consistent way, taking full account of the needs related to national defence and security policy and international agreements,
- being convinced that the safe and efficient use of airspace can only be achieved through close cooperation between civil and military users of airspace, mainly based on the concept of flexible use of airspace and effective civil-military coordination as established by ICAO,

declare that they will:

1. cooperate with each other, taking into account national military requirements, in order that the concept of flexible use of airspace is fully and uniformly applied in all Member States by all users of airspace;
 2. ensure that the interests of Member States' military users of airspace will, where relevant, be represented in the whole development, decision-making process and implementation of the single European sky, including the Single Sky Committee set up under Article 5 of Regulation (EC) No 549/2004 (framework Regulation);
 3. ensure, where appropriate, that military personnel are involved in the work undertaken by recognised organisations set up under Article 3 of Regulation (EC) No 550/2004 (service provision Regulation);
 4. take into account, in relation to matters of air traffic management, the fundamental importance of Eurocontrol;
 5. enhance civil military cooperation and, if and to the extent deemed necessary by all Member States concerned,
 - facilitate cooperation between their armed forces in all matters of air traffic management, so as to make it possible to address relevant needs in the implementation of the regulatory framework for the single European sky;
 - taking into account the objective of establishing the regulatory framework for the single European sky by 31 December 2004, create the arrangements necessary to support such military cooperation in order to guarantee a balanced consideration of economic as well as security and defence requirements.
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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)****(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 ⁽¹⁾,

Having regard to the opinion of the European Economic and Social Committee ⁽²⁾,

Having regard to the opinion of the Committee of the Regions ⁽³⁾,

Acting in accordance with the procedure laid down in Article 251 of the Treaty ⁽⁴⁾, in the light of the joint text approved by the Conciliation Committee on 11 December 2003,

Whereas:

- (1) Member States have restructured, to varying degrees, their national air navigation service providers by increasing their level of autonomy and freedom to provide services. It is increasingly necessary to ensure that minimum public-interest requirements are satisfied under this new environment.
- (2) The report of the High Level Group on the single European sky of November 2000 has confirmed the need for rules at Community level to distinguish between regulation and service provision and to introduce a

system of certification aimed at preserving public interest requirements, most notably in terms of safety, and to improve charging mechanisms.

- (3) Regulation (EC) No 549/2004 of the European Parliament and of the Council of 10 March 2004 (the framework Regulation) ⁽⁵⁾ lays down the framework for the creation of the single European sky.
- (4) In order to create the single European sky, measures should be adopted to ensure the safe and efficient provision of air navigation services consistent with the organisation and use of airspace as provided for in Regulation (EC) No 551/2004 of the European Parliament and of the Council of 10 March 2004 on the organisation and use of the airspace in the single European sky (the airspace Regulation) ⁽⁶⁾. The establishment of a harmonised organisation for the provision of such services is important in order to respond adequately to the demand of airspace users and to regulate air traffic safely and efficiently.
- (5) The provision of air traffic services, as envisaged by this Regulation, is connected with the exercise of the powers of a public authority, which are not of an economic nature justifying the application of the Treaty rules of competition.
- (6) Member States are responsible for monitoring the safe and efficient provision of air navigation services and for the control of compliance by air navigation service providers with the common requirements established at Community level.
- (7) Member States should be permitted to entrust to recognised organisations, which are technically experienced, the verification of compliance of air navigation service providers with the common requirements established at Community level.

⁽¹⁾ OJ C 103 E, 30.4.2002, p. 26.

⁽²⁾ OJ C 241, 7.10.2002, p. 24.

⁽³⁾ OJ C 278, 14.11.2002, p. 13.

⁽⁴⁾ Opinion of the European Parliament of 3 September 2002 (OJ C 272 E, 13.11.2003, p. 303), Council common position of 18 March 2003 (OJ C 129 E, 3.6.2003, p. 16) and position of the European Parliament of 3 July 2003 (not yet published in the Official Journal). Legislative resolution of the European Parliament of 29 January 2004 and Decision of the Council of 2 February 2004.

⁽⁵⁾ See page 1 of this Official Journal.

⁽⁶⁾ See page 20 of this Official Journal.

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- (8) Smooth operation of the air transport system also requires uniform and high safety standards for air navigation service providers.
- (9) Arrangements should be made to harmonise the licensing systems for controllers, in order to improve the availability of controllers and to promote the mutual recognition of licences.
- (10) Whilst guaranteeing the continuity of service provision, a common system should be established for certifying air navigation service providers, which constitutes a means for defining the rights and obligations of those providers and for regular monitoring of compliance with such requirements.
- (11) Conditions attached to certificates should be objectively justified and should be non-discriminatory, proportionate and transparent, and compatible with relevant international standards.
- (12) The certificates should be mutually recognised by all Member States in order to allow air navigation service providers to provide services in a Member State other than the country in which they obtained their certificates, within the limits of the safety requirements.
- (13) The provision of communication, navigation and surveillance services, as well as aeronautical information services, should be organised under market conditions whilst taking into account the special features of such services and maintaining a high level of safety.
- (14) In the interest of facilitating the safe handling of air traffic across the boundaries of the Member States for the benefit of the airspace users and their passengers, the system of certification should provide for a framework to enable Member States to designate providers of air traffic services, regardless of where they have been certified.
- (15) On the basis of their analysis of safety considerations, Member States should be able to designate one or more providers of meteorological services in respect of all or part of the airspace under their responsibility, without the need to organise a call for tenders.
- (16) Air navigation service providers should establish and maintain close cooperation with military authorities responsible for activities that may affect general air traffic, through appropriate arrangements.
- (17) The accounts of all air navigation service providers should provide for maximum transparency.
- (18) The introduction of harmonised principles and conditions for access to operational data should facilitate the provision of air navigation services and the operation of airspace users and airports under a new environment.
- (19) Charging conditions applying to airspace users should be fair and transparent.
- (20) User charges should provide remuneration for the facilities and services provided by air navigation service providers and Member States. The level of user charges should be proportionate to the cost, taking into consideration the objectives of safety and economic efficiency.
- (21) There should be no discrimination between airspace users as to the provision of equivalent air navigation services.
- (22) Air navigation service providers offer certain facilities and services directly related to the operation of aircraft, the costs of which they should be able to recover according to the 'user pays' principle, which is to say that airspace users should pay for the costs they generate at, or as close as possible to, the point of use.
- (23) It is important to ensure the transparency of the costs to which such facilities or services give rise. Accordingly, any changes made to the system or level of charges should be explained to airspace users; such changes or investment proposed by air navigation service providers should be explained as part of an exchange of information between their management bodies and airspace users.
- (24) There should be scope for modulating charges that contribute to maximising system-wide capacity. Financial incentives may be a useful way of accelerating the introduction of ground-based or airborne equipment that increases capacity, of rewarding high performance or of offsetting the inconvenience of choosing less desirable routings.

- (25) In the context of those revenues raised to provide a reasonable return on assets, and in direct correlation with the savings made from efficiency improvements, the Commission should study the possibility of establishing a reserve aimed at reducing the impact of a sudden increase in charges to airspace users at times of reduced levels of traffic.
- (26) The Commission should examine the feasibility of organising temporary financial aid for measures to increase the capacity of Europe's air traffic control system as a whole.
- (27) The establishment and imposition of charges on airspace users should be reviewed by the Commission on a regular basis, in cooperation with Eurocontrol, and with national supervisory authorities and airspace users.
- (28) Owing to the particular sensitivity of information concerning air navigation service providers, national supervisory authorities should not disclose information covered by the obligation of professional secrecy, without prejudice to the organisation of a system for monitoring and publishing the performance of those providers,

HAVE ADOPTED THIS REGULATION:

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.

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. Member States may conclude an agreement on the supervision provided for in this Article with regard to the air navigation service provider providing services in a Member State other than that in which the provider has its principal place of operation.

4. National supervisory authorities shall make appropriate arrangements for close cooperation with each other 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.

Article 3

Recognised organisations

1. National supervisory authorities may decide to delegate in full or in part the inspections and surveys referred to in Article 2(2) to recognised organisations 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 recognised organisations 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, identify and adopt the Eurocontrol safety regulatory requirements (ESARRs) and subsequent amendments to those requirements within the scope of this Regulation that shall be made mandatory under Community law. Publication shall take the form of references to such ESARRs in the *Official Journal of the European Union*.

Article 5

Licensing of controllers

As soon as possible after the entry into force of this Regulation, the Commission shall present, if appropriate, a proposal to the European Parliament and to the Council on the licensing of controllers.

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.

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 Article 8 and subject to Article 9, the issue of certificates shall confer on air navigation service providers the possibility of offering their services to other air navigation service providers, airspace users and airports within the Community.

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. 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. 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.

3. 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.

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

5. 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 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, in their internal accounting, identify the relevant costs and income for air navigation services, broken down in accordance with Eurocontrol's principles for establishing the cost-base for route facility charges and the calculation of unit rates 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⁽¹⁾ 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.

CHAPTER III

CHARGING SCHEMES*Article 14***General**

In accordance with the requirements of Articles 15 and 16, a charging scheme for air navigation services shall be developed that contributes to the achievement of greater transparency with respect to the determination, imposition and enforcement of charges to airspace users. 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 full 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;
- (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 recognised organisations, as well as other costs

⁽¹⁾ OJ L 243, 11.9.2002, p. 1.

incurred by the relevant Member State and service provider in relation to the provision of air navigation services;

- (c) the cost of different air navigation services shall be identified separately, as provided for in Article 12(3);
- (d) cross-subsidy between different air navigation services shall be allowed only when justified for objective reasons, and 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. Without prejudice to Eurocontrol's charging system for en route charges, 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;
- (c) air navigation services may produce sufficient revenues to exceed all direct and indirect operating costs and 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 and effective provision of air navigation services with a view to a high level of safety and to cost efficiency and shall stimulate

integrated service provision. To that effect, such charges may be used to provide:

- mechanisms, including incentives consisting of financial advantages and disadvantages, to encourage air navigation service providers and/or airspace users to support improvements in air traffic flow management such as increased capacity and reduction of delays, while maintaining an optimum safety level. The decision as to whether to apply such mechanisms remains the sole responsibility of each Member State,
- revenues to benefit projects designed to assist specific categories of airspace users and/or air navigation service providers in order to improve collective air navigation infrastructures, the provision of air navigation services and the use of airspace.

4. The implementing rules in the fields covered by paragraphs 1, 2 and 3 shall be established in accordance with the procedure referred to in Article 8 of the framework Regulation.

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.

2. At the request of one or more Member States which consider that the abovementioned principles and rules have not been properly applied, or on its own initiative, the Commission shall carry out an investigation on any allegation of non-compliance or non-application of the principles and/or rules concerned. 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.

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

CHAPTER IV

FINAL PROVISIONS

Article 17

Adjustment to technical progress

1. In order to make adaptations to technical developments, adjustments may be made to the Annexes in accordance with the procedure referred to in Article 5(3) of the framework Regulation.

2. The Commission shall publish implementing rules adopted on the basis of this Regulation in the *Official Journal of the European Union*.

Article 18

Confidentiality

1. Neither the national supervisory authorities, acting in accordance with their national legislation, nor the Commission shall disclose information of a confidential nature, in particular

information about air navigation service providers, their business relations or their cost components.

2. Paragraph 1 shall be without prejudice to the right of disclosure by national supervisory authorities where it is essential for the purposes of fulfilling their duties, in which case such disclosure shall be proportionate and shall have regard to the legitimate interests of air navigation service providers in the protection of their business secrets.

3. Moreover, paragraph 1 shall not preclude disclosure of information, other than information of a confidential nature, on the conditions and performance of service provision.

Article 19

Entry into force

1. This Regulation shall enter into force on the 20th 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.

For the European Parliament

The President

P. COX

For the Council

The President

D. ROCHE

ANNEX I

REQUIREMENTS FOR RECOGNISED ORGANISATIONS

The recognised organisation must:

- be able to document extensive experience in assessing public and private entities in the air transport sectors, in particular air navigation service providers, and in other similar sectors in one or more of the fields covered by this Regulation,
 - have comprehensive rules and regulations for the periodic survey of the abovementioned entities, published and continually upgraded and improved through research and development programmes,
 - not be controlled by air navigation service providers, by airport management authorities or by others engaged commercially in the provision of air navigation services or in air transport services,
 - be established with significant technical, managerial, support and research staff commensurate with the tasks to be carried out,
 - be managed and administered in such a way as to ensure the confidentiality of information required by the administration,
 - be prepared to provide relevant information to the national supervisory authority concerned,
 - have defined and documented its policy and objectives for and commitment to quality and have ensured that this policy is understood, implemented and maintained at all levels in the organisation,
 - have developed, implemented and maintained an effective internal quality system based on appropriate parts of internationally recognised quality standards and in compliance with EN 45004 (inspection bodies) and with EN 29001, as interpreted by the IACS Quality System Certification Scheme Requirements,
 - be subject to certification of its quality system by an independent body of auditors recognised by the authorities of the Member State in which it is located.
-

ANNEX II

CONDITIONS TO BE ATTACHED TO CERTIFICATES

1. Certificates shall specify:
 - (a) the national supervisory authority issuing the certificate;
 - (b) the applicant (name and address);
 - (c) the services which are certified;
 - (d) a statement of the applicant's conformity with the common requirements, as defined in Article 6 of this Regulation;
 - (e) the date of issue and the period of validity of the certificate.
 2. Additional conditions attached to certificates may, as appropriate, be related to:
 - (a) non-discriminatory access to services for airspace users and the required level of performance of such services, including safety and interoperability levels;
 - (b) the operational specifications for the particular services;
 - (c) the time by which the services should be provided;
 - (d) the various operating equipment to be used within the particular services;
 - (e) ring-fencing or restriction of operations of services other than those related to the provision of air navigation services;
 - (f) contracts, agreements or other arrangements between the service provider and a third party and which concern the service(s);
 - (g) provision of information reasonably required for the verification of compliance of the services with the common requirements, including plans, financial and operational data, and major changes in the type and/or scope of air navigation services provided;
 - (h) any other legal conditions which are not specific to air navigation services, such as conditions relating to the suspension or revocation of the certificate.
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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)****(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 ⁽¹⁾,

Having regard to the opinion of the European Economic and Social Committee ⁽²⁾,

Having regard to the opinion of the Committee of the Regions ⁽³⁾,

Acting in accordance with the procedure laid down in Article 251 of the Treaty ⁽⁴⁾, in the light of the joint text approved by the Conciliation Committee on 11 December 2003,

Whereas:

- (1) The creation of the single European sky requires a harmonised approach for regulation of the organisation and the use of airspace.
- (2) In the report of the High Level Group on the single European sky in November 2000 it is considered that airspace should be designed, regulated and strategically managed on a European basis.
- (3) The Communication of the Commission on the creation of the single European sky of 30 November 2001 calls for structural reform to permit the creation of the single

European sky by way of a progressively more integrated management of airspace and the development of new concepts and procedures of air traffic management.

- (4) Regulation (EC) No 549/2004 of the European Parliament and of the Council of 10 March 2004 (the framework Regulation) ⁽⁵⁾ lays down the framework for the creation of the single European sky.
- (5) In Article 1 of the 1944 Chicago Convention on Civil Aviation, the Contracting States recognise that 'every State has complete and exclusive sovereignty over the airspace above its territory'. It is within the framework of such sovereignty that the Member States of the Community, subject to applicable international conventions, exercise the powers of a public authority when controlling air traffic.
- (6) Airspace is a common resource for all categories of users that needs to be used flexibly by all of them, ensuring fairness and transparency whilst taking into account security and defence needs of Member States and their commitments within international organisations.
- (7) Efficient airspace management is fundamental to increasing the capacity of the air traffic services system, to providing the optimum response to various user requirements and to achieving the most flexible use of airspace.
- (8) The activities of Eurocontrol confirm that the route network and airspace structure cannot realistically be developed in isolation, as each individual Member State is an integral element of the European air traffic management network (EATMN), both inside and outside the Community.

⁽¹⁾ OJ C 103 E, 30.4.2002, p. 35.

⁽²⁾ OJ C 241, 7.10.2002, p. 24.

⁽³⁾ OJ C 278, 14.11.2002, p. 13.

⁽⁴⁾ Opinion of the European Parliament of 3 September 2002 (OJ C 272 E, 13.11.2003, p. 316), Council Common Position of 18 March 2003 (OJ C 129 E, 3.6.2003, p. 11) and position of the European Parliament of 3 July 2003 (not yet published in the Official Journal). Legislative resolution of the European Parliament of 29 January 2004 and Decision of the Council of 2 February 2004.

⁽⁵⁾ See page 1 of this Official Journal.

- (9) A progressively more integrated operating airspace should be established for en-route general air traffic in the upper airspace; the interface between upper and lower airspace should be identified accordingly.
- (10) A European upper flight information region (EUIR) encompassing the upper airspace under the responsibility of the Member States within the scope of this Regulation should facilitate common planning and aeronautical information publication in order to overcome regional bottlenecks.
- (11) Airspace users face disparate conditions of access to, and freedom of movement within, the Community airspace. This is due to the lack of harmonisation in the classification of airspace.
- (12) The reconfiguration of airspace should be based on operational requirements regardless of existing boundaries. Common general principles for creating uniform functional airspace blocks should be developed in consultation with and on the basis of technical advice from Eurocontrol.
- (13) It is essential to achieve a common, harmonised airspace structure in terms of routes and sectors, to base the present and future organisation of airspace on common principles, and to design and manage airspace in accordance with harmonised rules.
- (14) The concept of the flexible use of airspace should be applied effectively; it is necessary to optimise the use of sectors of airspace, especially during peak periods for general air traffic and in high-traffic airspace, by cooperation between Member States in respect of the use of such sectors for military operations and training. To that end, it is necessary to allocate the appropriate resources for an effective implementation of the concept of the flexible use of airspace, taking into account both civil and military requirements.
- (15) Member States should endeavour to cooperate with neighbouring Member States to apply the concept of flexible use of airspace across national borders.
- (16) Differences in the organisation of civil-military cooperation in the Community restrict uniform and timely airspace management and the implementation of changes. The success of the single European sky is dependent upon effective cooperation between civil and military authorities, without prejudice to the prerogatives and responsibilities of the Member States in the field of defence.
- (17) Military operations and training should be safeguarded whenever the application of common principles and criteria is detrimental to their safe and efficient performance.
- (18) Adequate measures should be introduced to improve the effectiveness of air traffic flow management in order to assist existing operational units, including the Eurocontrol Central Flow Management Unit, to ensure efficient flight operations.
- (19) It is desirable to reflect upon the extension of upper airspace concepts to the lower airspace, in accordance with a timetable and appropriate studies,
- HAVE ADOPTED THIS REGULATION:
- 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) ⁽¹⁾.
- ⁽¹⁾ See page 10 of this Official Journal.

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*.

CHAPTER II

AIRSPACE ARCHITECTURE

Article 2

Division level

The division level between upper and lower airspace shall be set at flight level 285.

Deviations from the division level that are justified in the light of operational requirements may be decided upon in agreement with the Member States concerned in accordance with the procedure referred in Article 5(3) of the framework Regulation.

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.

5. Without prejudice to the publication by Member States of aeronautical information and in a manner consistent with this publication, the Commission, in close cooperation with Eurocontrol, shall coordinate the development of a single aeronautical information publication relating to the EUIR, taking account of relevant ICAO requirements.

Article 4

Airspace classification

The Commission and the Member States shall design the EUIR in accordance with a progressive harmonisation of airspace classification, designed to ensure the seamless provision of air navigation services within the framework of the single European sky. This common approach shall be based on a simplified application of airspace classification, as defined within the Eurocontrol airspace strategy for the European Civil Aviation Conference States in accordance with ICAO standards.

The necessary implementing rules in this field shall be established in accordance with the procedure under Article 8 of the framework Regulation.

Article 5

Reconfiguration of the upper airspace

1. With a view to achieving maximum capacity and efficiency of the air traffic management network within the single European sky, and with a view to maintaining a high level of safety, the upper airspace shall be reconfigured into functional airspace blocks.

2. Functional airspace blocks shall, *inter alia*:

- (a) be supported by a safety case;
- (b) enable optimum use of airspace, taking into account air traffic flows;
- (c) be justified by their overall added value, including optimal use of technical and human resources, on the basis of cost-benefit analyses;
- (d) ensure a fluent and flexible transfer of responsibility for air traffic control between air traffic service units;

- (e) ensure compatibility between the configurations of upper and lower airspace;
- (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.

3. Common general principles for the establishment and modification of functional airspace blocks shall be developed in accordance with the procedure under Article 8 of the framework Regulation.

4. A functional airspace block shall only be established by mutual agreement between all Member States who have responsibility for any part of the airspace included in the block, or by a declaration of one Member State if the airspace included in the block is wholly under its responsibility. The Member State(s) concerned shall only act after having consulted interested parties, including the Commission and the other Member States.

5. In a case 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 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.

6. Where difficulties arise between two or more Member States with regard to a cross-border functional airspace block which 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 4, the Member States shall take such opinion into account in order to find a solution.

7. The decisions referred to in paragraphs 4 and 5 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.

Article 6

Optimised route and sector design in the upper airspace

1. Common principles and criteria for route and sector design shall be established to ensure the safe, economically

efficient and environmentally friendly use of airspace. Sector design shall be coherent inter alia with route design.

2. The implementing rules in the fields covered by paragraph 1 shall be adopted in accordance with the procedure under Article 8 of the framework Regulation.

3. Decisions regarding the establishment or modification of routes and sectors shall require the approval of the Member States who have responsibility for the airspace to which such decisions apply.

CHAPTER III

FLEXIBLE USE OF AIRSPACE IN THE SINGLE EUROPEAN SKY

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

Air traffic flow management

1. Implementing rules for air traffic flow management shall be established in accordance with the procedure under Article 8 of the framework Regulation, with a view to optimising available capacity in the use of airspace and enhancing air traffic flow management processes. These rules shall be based on transparency and efficiency, ensuring that capacity is provided in a flexible and timely manner, consistent with the recommendations of the ICAO regional air navigation plan, European Region.

2. The implementing rules 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.

CHAPTER IV

FINAL PROVISIONS

Article 10

Review

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

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

Article 11

Entry into force

This Regulation shall enter into force on the 20th 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.

For the European Parliament

The President

P. COX

For the Council

The President

D. ROCHE

COMMISSION STATEMENT

On the basis of a report on experience in implementing Article 5, the Commission will, if necessary, make proposals for amendment of the procedure provided for in Article 5(6) within a period of five years.

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)****(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 ⁽¹⁾,

Having regard to the opinion of the European Economic and Social Committee ⁽²⁾,

Having regard to the opinion of the Committee of the Regions ⁽³⁾,

Acting in accordance with the procedure laid down in Article 251 of the Treaty ⁽⁴⁾, in the light of the joint text approved by the Conciliation Committee on 11 December 2003,

Whereas:

(1) In order to create the Single European Sky, measures should be adopted in relation to systems, constituents and associated procedures with the objective of ensuring the interoperability of the European air traffic management network (EATMN) consistent with the provision of air navigation services as provided for in Regulation (EC) No 550/2004 of the European Parliament and of the Council of 10 March 2004 on the provision of air navigation services in the Single European Sky (the service provision Regulation) ⁽⁵⁾ and the organisation and use of airspace as provided for in Regulation (EC)

No 551/2004 of the European Parliament and of the Council of 10 March 2003 on the organisation and use of the airspace in the Single European Sky (the airspace Regulation) ⁽⁶⁾.

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

(3) Regulation (EC) No 549/2004 of the European Parliament and of the Council of 10 March 2004 (the framework Regulation) ⁽⁸⁾ lays down the framework for the creation of the Single European Sky.

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

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

⁽¹⁾ OJ C 103 E, 30.4.2002, p. 41.

⁽²⁾ OJ C 241, 7.10.2002, p. 24.

⁽³⁾ OJ C 278, 14.11.2002, p. 13.

⁽⁴⁾ Opinion of the European Parliament of 3 September 2002 (OJ C 272 E, 13.11.2003, p. 325), Council Common Position of 18 March 2003 (OJ C 129 E, 3.6.2003, p. 26) and position of the European Parliament of 3 July 2003 (not yet published in the Official Journal). Legislative resolution of the European Parliament of 29 January 2004 and Decision of the Council of 2 February 2004.

⁽⁵⁾ See page 10 of this Official Journal.

⁽⁶⁾ See page 20 of this Official Journal.

⁽⁷⁾ OJ C 136, 4.6.1985, p. 1.

⁽⁸⁾ See page 1 of this Official Journal.

- (6) The predominance of national technical specifications used in procurement has led to fragmentation of the systems market and does not facilitate industrial cooperation at Community level; as a result, industry is particularly affected since it needs to considerably adapt its products for each national market; these practices render development and implementation of new technology unnecessarily difficult and slow down the introduction of new operational concepts that are required to increase capacity.
- (7) It is therefore in the interest of all those involved in air traffic management to develop a new partnership approach allowing the balanced involvement of all parties and stimulating creativity and the sharing of knowledge, experience and risks; such partnership should aim at defining, in cooperation with industry, a coherent set of Community specifications that can fulfil the widest possible range of needs.
- (8) The internal market is a Community objective and therefore measures taken under this Regulation should contribute to its progressive development in this sector.
- (9) It is therefore appropriate to define essential requirements which should apply to the European air traffic management network, its systems, constituents and associated procedures.
- (10) Implementing rules for interoperability should be drawn up for systems whenever necessary to complement or further refine the essential requirements; those rules should also be drawn up where necessary to facilitate the coordinated introduction of new, agreed and validated concepts of operation or technologies; compliance with those rules should be permanently maintained; those rules should rely on rules and standards developed by international organisations such as Eurocontrol or ICAO.
- (11) The development and adoption of Community specifications concerning EATMN, its systems and constituents and associated procedures is an appropriate means of defining the technical and operational conditions necessary to meet the essential requirements and relevant implementing rules for interoperability; compliance with published Community specifications, which remains voluntary, creates a presumption of conformity with the essential requirements and the relevant implementing rules for interoperability.
- (12) Community specifications should be established by the European standardisation bodies in conjunction with the European Organisation for Civil Aviation Equipment (Eurocae) and by Eurocontrol, in accordance with general Community standardisation procedures.
- (13) The procedures governing the assessment of conformity or suitability for use of constituents should be based on the use of the modules covered by Council Decision 93/465/EEC of 22 July 1993 concerning the modules for the various phases of the conformity assessment procedures and the rules for the affixing and use of the CE conformity marking, which are intended to be used in the technical harmonisation directives⁽¹⁾; as far as necessary, these modules should be expanded to cover specific requirements of the industries concerned.
- (14) The market concerned is of small size and consists of systems and constituents used almost exclusively for air traffic management purposes and not intended for the general public; it would be therefore excessive to affix the CE mark to constituents as, on the basis of the assessment of conformity and/or suitability for use, the manufacturer's declaration of conformity is sufficient; that should not affect the obligation on manufacturers to affix the CE mark to certain constituents in order to certify their compliance with other Community legislation relating to them.
- (15) The putting into service of air traffic management systems should be subject to verification of compliance with the essential requirements and relevant implementing rules for interoperability; use of Community specifications creates a presumption of conformity with the essential requirements and relevant implementing rules for interoperability.
- (16) The full application of this Regulation should be accomplished by means of a transitional strategy designed to attain the objectives of this Regulation while not creating unjustified cost-benefit barriers to preservation of the existing infrastructure.

(1) OJ L 220, 30.8.1993, p. 23.

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

- harmonised conditions with regard to the availability and efficient use of radio spectrum necessary for the implementation of the Single European Sky, including electromagnetic compatibility aspects,
- protection of the safety-of-life services from harmful interference,
- efficient and appropriate use of frequencies allocated to and managed exclusively by the aviation sector.

(18) Council Directive 93/65/EEC of 19 July 1993 on the definition and use of compatible technical specifications for the procurement of air traffic management equipment and systems ⁽¹⁾ is limited to obligations of awarding entities; this Regulation is more comprehensive in that it addresses obligations of all actors, including air navigation service providers, airspace users, industry and airports, and provides both for rules applicable to all and for the adoption of Community specifications which, while being voluntary, creates a presumption of conformity with the essential requirements. Therefore, Directive 93/65/EEC, Commission Directive 97/15/EC of 25 March 1997 adopting Eurocontrol standards and amending Council Directive 93/65/EEC on the definition and use of compatible technical specifications for the procurement of air-traffic-management equipment and systems ⁽²⁾ and Commission Regulations (EC) No 2082/2000 of 6 September 2000 adopting Eurocontrol standards and amending Directive 97/15/EC ⁽³⁾ and (EC) No 980/2002 of 4 June 2002 amending Regulation (EC) No 2082/2000 should be repealed after a transitional period.

(19) For reasons of legal certainty it is important to ensure that the substance of certain provisions of Community legislation adopted on the basis of Directive 93/65/EEC

remains in force unchanged. The adoption under this Regulation of the implementing rules corresponding to such provisions will necessitate a certain amount of time,

HAVE ADOPTED THIS REGULATION:

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.

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

⁽²⁾ OJ L 95, 10.4.1997, p. 16. Directive as last amended by Regulation (EC) No 2082/2000 (OJ L 254, 9.10.2000, p. 1).

⁽³⁾ OJ L 254, 9.10.2000, p. 1. Regulation as last amended by Regulation (EC) No 980/2002 (OJ L 150, 8.6.2002, p. 38).

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
- (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⁽¹⁾ and pursuant to the general guidelines on cooperation between the Commission and the standardisation bodies signed on 13 November 1984;

or

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

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

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

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

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

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

⁽¹⁾ OJ L 204, 21.7.1998, p. 37. Directive as last amended by Directive 98/48/EC (OJ L 217, 5.8.1998, p. 18).

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 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.

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.

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

In case of any technical or operational developments, adjustments may be made to Annexes I and II in accordance with the procedure referred to in Article 5(3) 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.

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.

*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.

For the European Parliament

The President

P. COX

For the Council

The President

D. ROCHE

ANNEX I**LIST OF SYSTEMS FOR AIR NAVIGATION SERVICES**

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

1. Systems and procedures for airspace management.
 2. Systems and procedures for air traffic flow management.
 3. Systems and procedures for air traffic services, in particular flight data processing systems, surveillance data processing systems and human-machine interface systems.
 4. Communications systems and procedures for ground-to-ground, air-to-ground and air-to-air communications.
 5. Navigation systems and procedures.
 6. Surveillance systems and procedures.
 7. Systems and procedures for aeronautical information services.
 8. Systems and procedures for the use of meteorological information.
-

ANNEX II

ESSENTIAL REQUIREMENTS**Part A: General requirements**

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

1. *Seamless operation*

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

2. *Support for new concepts of operation*

The EATMN, its systems and their constituents shall support, on a coordinated basis, new agreed and validated concepts of operation that improve the quality 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*

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

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

Account should be taken of national security requirements.

5. *Environmental constraints*

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

6. *Principles governing the logical architecture of systems*

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

7. *Principles governing the construction of systems*

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

Part B: Specific requirements

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

1. *Systems and procedures for airspace management*

1.1. *Seamless operation*

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

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

2.1. *Seamless operation*

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

3. *Systems and procedures for air traffic services*

3.1. Flight data processing systems

3.1.1. Seamless operation

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

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

3.1.2. Support for new concepts of operation

Flight data processing systems shall accommodate the progressive implementation of advanced, agreed and validated concepts of operation for all phases of flight.

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.

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.

5. *Navigation systems and procedures*

5.1. Seamless operation

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

6. *Surveillance systems and procedures*

6.1. Seamless operation

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

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

7. *Systems and procedures for aeronautical information services*

7.1. Seamless operation

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

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

7.2. Support for new concepts of operation

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

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

8.1. Seamless operation

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

8.2. Support for new concepts of operation

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

ANNEX III

CONSTITUENTS

EC declaration

- of conformity
- of suitability for use

1. *Constituents*

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

2. *Scope*

The EC declaration covers:

- either the assessment of the intrinsic conformity of a constituent, considered in isolation, with the Community specifications to be met, or
- the assessment/judgment of the suitability for use of a constituent, considered within its air traffic management environment.

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

3. *Contents of the EC declaration*

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

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

- the Regulation references,
- the name and address of the manufacturer or its authorised representative established within the Community (give trade name and full address and, in the case of the authorised representative, also give the trade name of the manufacturer),
- description of the constituent,
- description of the procedure followed in order to declare conformity or suitability for use (Article 5 of this Regulation),
- all of the relevant provisions met by the constituent and in particular its conditions of use,
- if applicable, name and address of notified body or bodies involved in the procedure followed in respect of conformity or suitability for use and date of examination certificate together, where appropriate, with the duration and conditions of validity of the certificate,
- where appropriate, reference to the Community specifications followed,
- identification of signatory empowered to enter into commitments on behalf of the manufacturer or of the manufacturer's authorised representative established in the Community.

ANNEX IV

SYSTEMS

EC declaration of verification of systems

Verification procedure for systems

1. *Contents of EC declaration of verification of systems*

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

- the Regulation references,
- name and address of the air navigation service provider (trade name and full address),
- a brief description of the system,
- description of the procedure followed in order to declare conformity of the system (Article 6 of this Regulation),
- name and address of the notified body which carried out tasks pertaining to the verification procedure, if applicable,
- the references of the documents contained in the technical file,
- where appropriate, reference to the Community specifications,
- all the relevant temporary or definitive provisions to be complied with by the systems and in particular, where appropriate, any operating restrictions or conditions,
- if temporary: duration of validity of the EC declaration,
- identification of the signatory.

2. *Verification procedure for systems*

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

The system is checked for each of the following aspects:

- overall design,
- development and integration of the system, including in particular constituent assembly and overall adjustments,
- operational system integration,
- specific system maintenance provisions if applicable.

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

3. *Technical file*

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

The following documents shall be included as a minimum:

- indication of the relevant parts of the technical specifications used for procurement that ensure compliance with the applicable implementing rules for interoperability and, where appropriate, the Community specifications,
- list of constituents as referred to in Article 3 of this Regulation,
- copies of the EC declaration of conformity or suitability for use with which the above mentioned constituents must be provided in accordance with Article 5 of this Regulation accompanied, where appropriate, by a copy of the records of the tests and examinations carried out by the notified bodies,
- where a notified body has been involved in the verification of the system(s), a certificate countersigned by itself, stating that the system complies with this Regulation and mentioning any reservations recorded during performance of activities and not withdrawn,
- where there has not been involvement of a notified body, a record of the tests and installation configurations made with a view to ensuring compliance with essential requirements and any particular requirements contained in the relevant implementing rules for interoperability.

4. *Submission*

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

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

ANNEX V

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.
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