



COMMISSION OF THE EUROPEAN COMMUNITIES

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Amended proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

laying down the framework for the creation of the Single European Sky

Amended proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on the provision of air navigation services in the Single European Sky

Amended proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on the organisation and use of the airspace in the Single European Sky

Amended proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on the interoperability of the European Air Traffic Management network

(presented by the Commission pursuant to Article 250 (2)
of the EC-Treaty)

EXPLANATORY MEMORANDUM

1. PRINCIPLES

- 1.1. In October 2001 the Commission submitted four legislative proposals for the creation of the Single European Sky¹ with a view to their adoption under the codecision procedure provided for in Article 251 of the Treaty establishing the European Community. On 15 May 2002, the Committee of the Regions delivered a favourable opinion. On 17 July 2002, the Economic and Social Committee delivered a favourable opinion.

On 3 September 2002 the European Parliament adopted a number of amendments at its first reading and approved the Commission proposals as amended. The Commission then indicated its position on each amendment, specifying which amendments it could accept and which it could not.

Subsequently the Commission drafted the following amended proposals.

- 1.2. The modifications incorporate the amendments accepted as such by the Commission, as well as the new provisions resulting from the amendments which were accepted in principle though worded differently or partially accepted.

Pursuant to Article 250(2) of the EC Treaty, the Commission amends the proposals as described below.

The amendments to the Commission's initial proposals are shown as follows: deleted passages are struck through and new or amended passages are indicated in bold and underlined characters.

2. AMENDED PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL LAYING DOWN THE FRAMEWORK FOR THE CREATION OF THE SINGLE EUROPEAN SKY (2001/0060 (COD))

2.1. Amendments accepted as such

- Amendments 4 and 30

The purpose of these amendments is to introduce an effective sanctioning mechanism against the operators that breach the rules. The current system is open to misuse and

¹ Proposal for a Regulation of the European Parliament and of the Council laying down the framework for the creation of the Single European Sky (COM(2001) 123 final/2 of 30/11/2001 – 2001/0060 (COD).

Proposal for a Regulation of the European Parliament and of the Council on the provision of air navigation services in the Single European Sky (COM(2001) 564 final/2 of 11/12/2001 – 2001/0235 (COD).

Proposal for a Regulation of the European Parliament and of the Council on the organisation and use of the airspace in the Single European Sky (COM(2001) 564 final/2 of 11/12/2001 – 2001/0236 (COD).

Proposal for a Regulation of the European Parliament and of the Council on the interoperability of the European Air Traffic Management network (COM(2001) 564 final/2 of 11/12/2001 – 2001/0237 (COD).

to risk of abuse, in particular with regard to air traffic flow management. The Commission accepts these amendments.

- Amendments 7, 8, 15, 16, 17, 18, 20, 21 and 32

These amendments clarify or improve the text of the regulation by reinforcing the reference to the consultation of social stakeholders (7), national defence needs (8), capacity needs (15), flight efficiency (16), performance indicators (18), safety (20, 21) and progress reporting (32). The Commission accepts these amendments.

2.2. Amendments accepted in principle but not as regards the wording

- Amendment 3

This amendment affirms the nature of public service of air navigation services. Nevertheless this nature primarily belong to air traffic control. Thus the Commission can accept this principle if referred to this function.

- Amendment 9

This amendment refers to the co-operation between the Community and Eurocontrol. The relationship between the Community and Eurocontrol is addressed through the imminent accession of the Community to this organisation. The principle of developing “the highest level of co-operation” between the two organisations will be a consequence of this event, as enshrined in the protocol of accession². Parallel references to this cooperation in a Community measure are superfluous and create confusion. The Commission can accept to recall this principle in a recital and to introduce a provision referring to its co-operation with the executive body of Eurocontrol, namely the Eurocontrol Agency, which will develop on a purely administrative basis. However, the wording of such a provision shall comply with the institutional principles concerning the performance of the duties of the Commission.

- Amendment 10

This amendment clarifies that simply adopting the legislative package consisting of the framework regulation and the three specific regulations will not be sufficient for the early implementation of the Single European Sky. Additional measures are necessary within the agreed term (end 2004). The Commission will adopt such measures pursuant to the procedures set up in the legislative package. The Commission accepts this principle.

- Amendment 12

The purpose of this amendment is to affirm the role of States in deciding the statute and structure for providers and the nature of public interest of air navigation service providers, which is particularly relevant for air traffic control. The Commission can accept this principle subject to rewording.

² “Whereas the purpose of the accession of the European Community to the Convention is to assist the European Organisation for the Safety of Air Navigation, hereinafter referred to as “EUROCONTROL”, in achieving its objectives as set out in the Convention, notably that of being a single and efficient body for Air Traffic Management policy making in Europe”.

- Amendment 14

The amendment aims at clarifying the scope of application of the Single European Sky. The term “jurisdiction” would implicitly refer to the airspace over international waters. However, the scope of application of the regulation cannot be enlarged beyond the scope of the Treaty. Therefore it is preferable to refer to “the airspace under the responsibility of Member States”.

- Amendments 22 and 23

These amendments aim at clarifying that the development and implementation of technical and operational concepts shall be done within programmes involving all parties and taking into account of international standards. The Commission can accept this principle.

- Amendment 26

The amendment refers to the rules of procedures of the Committee but it does not comply with the drafting practices. Thus the Commission can accept it in principle.

- Amendment 33

The amendment extends the scope of safeguards for security and defence reasons, to cover the prompt availability of airspace for the rapid reaction of armed forces. The text of the article has been worded as closely as possible to Article 297 of the Treaty. It refers to exceptional situations. The amendment refers to operational situations (conditions necessary for the rapid mobilisation of armed forces). Thus it would introduce a too generous leeway to waive the application of the regulation. The Commission can accept the principle of ensuring the Member States capability of maintaining and improving the availability of armed forces. However this principle should not result in unilateral exemptions from the application of the regulation. If so, the efficient management of airspace would be affected.

2.3. Amendments accepted in part with or without wording changes

- Amendment 5

Requirements for consultation of social partners under the Single European Sky may or may not fall within the scope of Article 138 of the Treaty. The formulation of such requirements should be defined in a more flexible way. Hence the Commission can only accept to reinforce the first sentence of the recital.

- Amendments 6 and 28

Amendment 28, which proposes the setting up of an industry advisory group having a institutional role, would result in affecting the right of initiative of the Commission. The Commission agrees on the need for the interested parties to contribute to the implementation of the reform. Hence the Commission can accept to express the principle of consultation of industry in a recital. This principle is also provided for in more detail in the proposal for a regulation on the interoperability of the air traffic management network under article 14.

- Amendment 11

The Commission can partially accept this amendment. The reference to radar would unacceptably restrict the scope of the surveillance infrastructure, which can also rely upon other technical means (such as satellite or datalink).

- Amendment 31

The Commission can accept this amendment provided that the reference to the European Union is amended to refer to the Community.

2.4. Rejected amendments

- Amendment 1

This amendment recalls the Member States obligations under the ICAO and Eurocontrol Conventions. The Community is not yet member of these two international organisations, though in the process of adhering to Eurocontrol. Obligations stemming from the membership of the two organisations at present only bind Member States. Thus, for the moment, the Commission can not accept this amendment.

- Amendments 2 and 13

These amendments eliminate the reference to economic aspects in recital 8 and in article 13. This reference is addressing the charging system, which is covered by the provisions of chapter III in the relevant proposal. Hence elimination of this reference is not acceptable.

- Amendment 19

This amendment restricts the decision-making process to one stakeholder (airspace users) and makes it dependent upon a specific requirement (interoperability). The introduction of new services relies upon all stakeholders concerned and depends on various requirements. Hence this amendment is not acceptable.

- Amendments 24 and 27

These amendments do not comply with the drafting rules adopted to implement the Decision concerning comitology (Decision of the Council 1999/468/CE). The nature of the Committee cannot be established “a priori” but it will depend upon the measures to be adopted. With regard to the Eurocontrol participation in the work the Committee, it would be desirable to decide so within the rules of procedures of the Committee. Therefore the Commission can not accept these amendments.

- Amendment 29

This amendment impacts on the right of initiative of the Commission. Hence it is not acceptable.

- Amendment 34

This amendment states the obvious and it is therefore superfluous. Furthermore a Community measure can not reiterate the obligations of Member States stemming from existing international treaties.

3. AMENDED PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON THE PROVISION OF AIR NAVIGATION SERVICES IN THE SINGLE EUROPEAN SKY (2001/0235(COD))

3.1. Amendments accepted as such

- Amendments 1, 2, 4, 7, 9, 11, 15, 17, 19, 24, 25, 31, 33 and 34

These amendments clarify or improve the text of the regulation by reinforcing the reference to safety (1, 9, 11, 19, 31), qualification of recognised organisations (2, 15, 33, 34), recruitment of controllers (4), international standards (7), co-operation between service providers (17), co-operation between civil and military authorities (24), use of data (25). The Commission accepts these amendments.

- Amendment 3

The purpose of this amendment is to introduce a recital reflecting the provision of the second paragraph of article 5 concerning the future role and responsibilities of the European Aviation Safety Agency. Hence the amendment is acceptable.

- Amendment 5

The purpose of this amendment is to call for the Commission's action to help solving the problem of the lack of controllers. The Commission is already active in this field and it has recently launched a study in conjunction with social parties. The Commission accepts this amendment.

- Amendment 23

This amendment states the prime responsibility of Member States with regard to the relations between their civil and military authorities. The Commission accepts this amendment.

3.2. Amendments accepted in principle but not as regards the wording

- Amendments 6 and 18

These amendments specify a period of duration of authorisations. Authorisations are not meant to be licenses but rather certifications of suitability of the service providers. The period of validity of such authorisations will be defined within the context of the definition of harmonised conditions (refer to Annex III to the Regulation). Thus the Commission can accept the principle the amendment puts forwards.

- Amendments 20 and 21

The amendments introduce two new requirements for defining harmonised conditions attached to authorisations. The Commission can agree on these requirements but it believes that they should eventually appear as conditions for the operation of air navigation services. These conditions will be further detailed through comitology.

- Amendment 22

The amendment clarifies that, notwithstanding the right given to existing air traffic service providers to carry out their operations after the entry into force of this regulation, these should be subject to an obligation of continued and increased performance in terms of safety and efficiency. The Commission can accept this principle provided that this obligation is clearly spelt out.

Amendment 28

The amendment would make the proposed charging scheme fully dependent upon the route charging system laid down in the multilateral agreement of Eurocontrol. The proposed charging scheme would not only apply to route charges (as is the case for the multilateral agreement) but also to terminal and approach charges (where Eurocontrol has no competence). Furthermore the Eurocontrol scheme leaves margins of interpretation and the Commission intends to come to harmonised and binding rules within the Community. Therefore the amendment could be accepted provided that it does not restrict the scope of Community action in this field.

- Amendment 29

The principle put forward by this amendment is already in force and it will not be modified by the present regulation. Member States remain responsible for setting unit rates of charges. Hence the Commission can accept this amendment in principle.

- Amendment 32

Amendment 32, which proposes the setting up of an industry advisory group having a institutional role, would result in affecting the right of initiative of the Commission. The Commission agrees on the need for the interested parties to contribute to the implementation of the reform. Hence the Commission can accept to express the principle of consultation of industry in a recital. This principle is also provided for in more detail in the proposal for a regulation on the interoperability of the air traffic management network under article 14.

3.3. Amendments accepted in part with or without wording changes

- Amendment 8

The Commission can partially accept this amendment. The reference to radar would unacceptably restrict the scope of the surveillance infrastructure, which can also rely upon other technical means (such as satellite or datalink).

- Amendment 10

The purpose of this amendment is to justify a review of the charging system to introduce more flexibility in the definition of the cost-base. This flexibility would be used to cope with sudden downturns of air traffic which cause immediate rises in charges. The Commission can partially accept this amendment. Its last sentence affects the right of initiative of the Commission. Thus it is not acceptable.

- Amendment 16

The purpose of this amendment is to specify in detail the fields of action to counter the problem of the lack of human resources. However, as it stands it would impinge upon the right of initiative of the Commission. Hence only its first part can be accepted.

- Amendment 27

The purpose of this amendment is to better specify conditions for the exchange of operational data. While the Commission can accept the first part of this amendment, confidentiality conditions will be defined, at a later stage, under the relevant implementing rules. Furthermore some identification would be impossible to avoid for operational reasons. Therefore the Commission can not accept the second part of this amendment.

- Amendment 30

The Commission can accept the first part of this amendment where it is recalled that improvements to economic efficiency should not jeopardise safety levels. With regard to cross-subsidies, the characteristics of the sector do not allow the exclusion, in principle, of cross-subsidies when justified by technical and operational circumstances. Thus, the second part of the amendment can not be accepted.

- Amendment 35

The Commission can accept the first part of this amendment. The reference to Eurocontrol safety requirements in the second part of the amendment is not appropriate and it can not be accepted.

3.4. Rejected amendments

- Amendment 12

The Commission can not accept this amendment. The reference to radar would unacceptably restrict the scope of the surveillance infrastructure, which can also rely upon other technical means (such as satellite or datalink).

- Amendment 13

This amendment introduces the principle of a strict (structural) separation between national supervisory authorities and air navigation service providers. While the Commission is not against this principle, it considers that its application should be gradual and proportional to take account of current circumstances. Therefore we consider that Member States should have the opportunity to choose the functional separation as a first step. Thus this amendment is not accepted.

- Amendment 14

This amendment introduces an appeals mechanism in the case of dispute between airspace users and Member States. Arrangements for allowing this are already available at national and Community level. Thus the Commission can not accept this amendment.

- Amendment 26

This amendment establishes the principle of commercial value of operational data. However, commercial conditions, if any, relating to the exchange of data should be defined in the relevant implementing measures. They may require free exchanges in a number of cases. Hence the Commission can not accept this amendment.

- Amendments 87, 88, 89 and 99

The purpose of these amendments is to affirm the principle of the integrity of air navigation services, the need to have them provided within a single organisation. The Commission can not accept these amendments for a number of reasons:

- Currently, most of the “ancillary” services are usually fully integrated in the same organisation, which provides air traffic services. However, some specific functions are already today usually not performed by the providers of air traffic services (e.g. ground-ground telecommunications and air ground data link). In these cases, services are used on a commercial contractual basis. Some service providers are also developing new co-operative approaches to service provision, which lead to the removal of fragmentation and to service unbundling. The main reason for doing this is the provision of regional services. Examples of these ventures are the EAD (European aeronautical information services) or the EAN (European aeronautical telecommunication network). Another example of unbundled service for navigation is Galileo.
- The aim of the regulation is to introduce a framework, which allows and facilitates individual service providers – at their own discretion and under the State control – to separate the “ancillary” services from the core function of air traffic services. This would give a concrete opportunity to service providers to establish regional services and it would facilitate removing existing fragmentation and promoting consolidation (the current infrastructures have been established at national level and there is a strong need to design and implement them at regional level). This could be achieved through joint ventures and strategic alliances where service providers could obtain better use of services by optimising the allocation of resources on larger scales thus leading to cost-savings and integration of the air traffic management systems.

- The creation of functional airspace blocks requires flexibility in the provision of supporting services. The current Nordic experience (creation of an airspace block involving the upper airspace of Denmark, Sweden, Finland and Norway) is an example (but also Maastricht UAC). These entities for the provision of air traffic services at regional level rely on the services already provided by current service providers (in particular with regard to the infrastructure: communication, navigation and surveillance).
- The requirement of having air navigation services organised by an integrated body would freeze the existing situation and hamper progress in the development and deployment of new technologies. Most of these are of cross-border nature and associate with regional rather than national services. Preventing this by stipulating the concept of “an integrated body” would deprive the Community of a concrete opportunity to become a leader in the market of air traffic management technologies.
- Any concern about a possible impact on safety of unbundling is unjustified. If a service provider wants to use the services of another provider it will define and control the “ancillary” services it will rely upon through the specification of technical and operational conditions and quality control. Furthermore this will be under the strict control of the national supervisory authority. Finally, since supporting services (such as communication, navigation and surveillance) should also be authorised, this will allow to survey of the application of safety standards.

4. AMENDED PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON THE ORGANISATION AND USE OF THE AIRSPACE IN THE SINGLE EUROPEAN SKY (2001/0236(COD))

4.1. Amendments accepted as such

- Amendments 38, 44, 45, 52, 53, 54 and 62

These amendments clarify or improve the text of the regulation by reinforcing the reference to operational conditions (38, 44, 54, 62) and safety (45, 52, 53). The Commission accepts these amendments.

4.2. Amendments accepted in principle but not as regards the wording

- Amendment 36

This amendment introduces a reference to the need of a proper interface of the air traffic management network between the Community and adjacent countries. This principle can be accepted provided that it does not lead to an exclusive requirement.

- Amendment 42

This amendment qualifies safety standards by using the word “maximum”. This would pose a question of interpretation since safety standards should be set at an adequate level. Thus the Commission can accept this amendment subject to redrafting.

- Amendment 48

This amendment fixes a term of five years for the extension of the concept of the single Flight information region to the lower airspace. The Commission prefers to retain a period of three years but it can accept to link this period to the results of application of this concept in the upper airspace.

- Amendment 49

The purpose of this amendment is to reflect the situations stemming from the mandates of ICAO to States to manage airspace over international waters. The Commission can accept the amendment subject to drafting changes.

- Amendment 64

This amendment, which proposes the setting up of an industry advisory group having a institutional role, would result in affecting the right of initiative of the Commission. The Commission agrees on the need for the interested parties to contribute to the implementation of the reform. Hence the Commission can accept to express the principle of consultation of industry in a recital. This principle is also provided for in more detail in the proposal for a regulation on the interoperability of the air traffic management network under article 14.

4.3. Amendments accepted in part with or without wording changes

- Amendment 37

This amendment specifies the role of Eurocontrol in the creation of functional blocks of airspace. The principle of Eurocontrol acting as an interface and an advisor in the process of definition of functional airspace blocks is not under question. However this role can not go as far as dictating solutions but it should take into account the responsibilities of the various parties involved.

- Amendment 39, 43 and 55

The purpose of these amendments is to clarify the principles guiding the definition of the route network. The Commission can accept these principles. With regard to amendment 55, the reference to Eurocontrol is not appropriate, as it puts an obligation on an international organisation which is outside the jurisdiction of the Community. Thus the Commission can not support this reference.

- Amendment 40

The purpose of this amendment is to refer to civil-military cooperation at national and international level. With regard to the latter the Commission favours a reference to the European Union to mean that adequate solutions could be found under the provisions of the 2nd pillar.

- Amendment 41

This amendment stresses the role of Eurocontrol, namely the Central Flow Management Unit, in the process of flow management. The Commission can accept a wording more focussed on the operational nature of this Unit. With regard to sanctions, they are already foreseen in the proposal for a regulation laying down the framework for the creation of the Single European Sky.

- Amendment 47

The purpose of this amendment is to make the division level between upper and lower airspace dependent upon operational requirements. The Commission believes that a common division level is required to harmonise and coordinate procedures. It can however accept that operational requirements could suggest marginal deviations from such a common level.

4.4. Rejected amendments

- Amendment 46

This amendment establishes a deadline for the creation of the European Upper Flight Information Region (EUIR). The creation of the EUIR should start after adoption of this regulation and is independent of the creation of the functional airspace blocks. Thus the Commission can not accept this amendment.

- Amendment 50

This amendment is superfluous since it reiterates criteria, which are already specified in article 5(2). Hence the amendment is not acceptable.

- Amendment 51

This amendment aims at introducing a dispute settlement mechanism in the case where Member States disagree on the definition of (cross-border) functional airspace blocks. Arbitration between States on such a definition will eventually occur within the comitology procedure. Thus this amendment is not acceptable.

- Amendment 56

This amendment suggests that the airspace design process is developed at a central level. In reality the process of definition of airspace configuration and planning of routes is usually developed at a local level and coordinated centrally. Therefore, the Commission can not accept this amendment.

- Amendments 57 and 59

These amendments reinforce the provisions concerning civil-military co-operation. However the suggested wording is too prescriptive and it may impact on the competence of Member States as far as defence matters are concerned. Hence these amendments are not acceptable.

- Amendment 58

This amendment makes the concept of the flexible use of airspace subject to air traffic flow management rules. The Commission can not accept this amendment.

- Amendments 60, 61 and 63

The purpose of these amendments is to introduce references to the Eurocontrol organisation. While the Commission looks forward to the involvement of Eurocontrol in the implementation of the Single European Sky, these references to Eurocontrol are not appropriate as it puts an obligation on an international organisation. With regard to amendment 61, it has to be stressed that, at present, no rules exist at the Eurocontrol level concerning flow management. Thus the Commission can not support this reference.

5. AMENDED PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON THE INTEROPERABILITY OF THE EUROPEAN AIR TRAFFIC MANAGEMENT NETWORK (2001/0237(COD))

5.1. Amendments accepted as such

- Amendments 65, 67, 68, 69, 70, 71, 72 and 74

These amendments clarify or improve the text of the regulation by reinforcing the reference to safety and the need for consultation of interested parties. The Commission accepts these amendments.

5.2. Amendments accepted in principle but not as regards the wording

- Amendment 73

This amendment, which proposes the setting up of an industry advisory group having a institutional role, would result in affecting the right of initiative of the Commission. The Commission agrees on the need for the interested parties to contribute to the implementation of the reform. Hence the Commission can accept to express the principle of consultation of industry in a recital. This principle is also provided for in more detail under article 14 of this proposal for a regulation.

- Amendment 76

This amendment stresses the need for the systematic analysis of incidents. The Commission can support this principle. However, it is misplaced in the text of the regulation. It should eventually appear in the implementing rules and related standards.

5.3. Rejected amendments

- Amendment 66

This amendment makes reference to the European Aviation Safety Agency. The role of this Agency will be to complement interoperability requirements, defined by means of this regulation, by issuing safety requirements with regard to airborne equipment. Thus the Commission can not accept this amendment.

- Amendment 75

The purpose of this amendment is to ensure the involvement of system users in the definition of systems. However, some of these users (such as controllers) are not appropriate to contribute to all the phases of the development process. For example the design phase pertains to engineers on the basis of requirements formulated by controllers. Thus the Commission can not accept this amendment.

- Amendment 77, 78 and 79

These amendments are not necessary since they replicate essential requirements already provided for in Annex II, Part A, point 3. Thus the Commission can not accept this amendment.

Amended proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

laying down the framework for the creation of the Single European Sky

(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 Commission³,

Having regard to the opinion of the Economic and Social Committee⁴,

Having regard to the opinion of the Committee of the Regions⁵,

Acting in accordance with the procedure laid down in Article 251 of the Treaty⁶,

Whereas:

- (1) Implementation of the common transport policy requires an efficient air transport system allowing safe, regular operation of air transport services and, consequently, 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, air traffic and 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 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 economic interest of the air navigation service providers.
- (4) Air navigation services should be developed in line with the general safety and performance objectives, in accordance with the principles laid down by the Convention on International Civil Aviation signed at Chicago on 7 December 1944.

³ OJ C

⁴ OJ C

⁵ OJ C

⁶ OJ C

- (5) 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 the European Organisation for the Safety of Air Navigation (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 single European airspace: the Single European Sky.
- (6) The closer co-operation between civil and military bodies, which is essential for efficient use of the airspace, should be pursued, using where possible existing co-operation frameworks and making use of all appropriate instruments for any matter concerning air traffic and air navigation services for exclusively military purposes.
- (7) The establishment of rules at Community level should permit the optimal use of the airspace as a whole and the performance of the air navigation services.
- (8) These rules should cover organisation and use of the airspace and the relevant procedures, provision of air navigation services, including the economic aspects, and air navigation equipment and systems and the associated procedures.
- (9) Air traffic control is a service of general interest with the aim of protecting both air transport users and residents affected by over-flying aircraft. It should therefore be carried out to the highest standards of responsibility and competence.**
- (10)** Use of the airspace should be organised and managed efficiently and in total safety, to meet the needs of both civil and military users and allow equitable, non-discriminatory allocation of the resources between all users.
- (11)** The air navigation services provided should ensure uniform, high safety standards for the air traffic which depends on these services. Provision of these services should be optimised to guarantee the best use of Europe's airspace resources.
- (12)** The technical and operational solutions should secure and raise safety standards, the overall capacity of the system, and full, efficient use of the capacity available.
- (13)** Some of the measures necessary for creating the Single European Sky call for the Commission to exercise the implementing powers under Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission⁷, for the sake of efficiency and speed. Creation of the Single European Sky therefore necessitates the establishment of a mechanism for co-operation with the Member States by the setting-up of a committee of representatives from the Member States which permits consideration of both civil and military interests and which allows the participation of outside experts.
- (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 in particular to ensure regulatory synergies and consistent approaches, and to avoid any duplication between the two organisations.** Pending the outcome of negotiations for the accession of the Community to Eurocontrol, which remains an important component in the creation of a pan-European airspace, the Commission and

⁷ OJ L 184, 17.7.1999, p. 23.

Eurocontrol may conclude appropriate arrangements to enable Eurocontrol to contribute to the preparation of Community legislation.

- (15)** It is desirable to extend the Single European Sky to non-Community countries, either within the framework of participation by the Community in the work of Eurocontrol, subject to accession by the Community to that international organisation, or by means of agreements concluded by the Community with the non-Community countries.
- (16)** It is necessary to make provision for procedures for assisting the Commission in its task of supervising and monitoring the creation of the Single European Sky in an efficient and regular fashion, notably by drawing on the expertise of the Member States and of Eurocontrol.
- (17)** The performance of the air navigation services system as a whole at European level need to be constantly assessed to check the effectiveness of the measures adopted and to propose further measures.
- (18)** In the general interest of safety of operations and in order to guarantee the enforcement of this regulation, there should be a scale of effective, proportionate and dissuasive penalties against airlines and service providers that breach the provision of this Regulation.
- (19)** The social partners ~~may~~ **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 level⁸ may also be consulted.
- (20)** The associations of airspace users, of air navigation service providers and of manufacturing industry should be informed and consulted on all measures concerning the technical aspects of the implementation of the Single European Sky.
- (21)** The drafting of the measures necessary in order to create the Single European Sky requires broad-based consultations with ~~the industrial partners~~ all the economic and social stakeholders concerned.
- (22)** 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.
- (23)** Since the objective of the action envisaged, namely the laying-down of the framework for 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 by the Community, while allowing for detailed implementing rules that take account of specific local conditions, the Commission may take measures in accordance with the subsidiarity principle 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 the objectives pursued,

⁸ OJ L 225, 12.8.1998, p. 27.

HAVE ADOPTED THIS REGULATION:

Article 1

Objective

The objective of this Regulation is to create, by 31 December 2004 at the latest, a European airspace, conceived and managed as a single airspace, offering optimum safety conditions and overall efficiency for air traffic in the Community and ensuring a level of capacity meeting the requirements of civil and military users. This single airspace is hereinafter referred to as the "Single European Sky".

This Regulation lays down the general lines of approach governing creation of the Single European Sky and identifies the fields for action by the Community and the means necessary, in terms of structures, procedures and resources, in order to create the Single European Sky, while taking into account **the Member States' defence needs and** Eurocontrol's task of establishing a pan European airspace.

The measures taken to apply the lines of approach referred to in the second paragraph shall take the form of implementation of common safety and performance rules for air navigation services, by means of mechanisms allowing optimum use of airspace at Community level and the involvement of all economic and social stakeholders concerned.

The decisions on measures to create the Single European Sky shall be adopted without delay in order to derive the first beneficial effects before the end of 2004.

Article 2

Definitions

For the purposes of this Regulation:

- (a) "air navigation services" means all air traffic control services, including ~~ancillary~~ services providing communication, **air** navigation and surveillance infrastructure **and functions**, meteorological services for airspace users, search and rescue services and aeronautical information services, all those services being provided to airspace users during every phase of the flight;
- (b) "air navigation service providers" means any public or private entity, **in accordance with the Member State choice thereof,** responsible for operating and managing air navigation services **in the discharge of missions of general interest that have been assigned to them;**
- (c) "air traffic" means all movements of civil and State aircraft, including military, customs and police aircraft;
- (d) "airspace users" means all civil and State aircraft, including military, customs and police aircraft;

- (e) "Eurocontrol" means 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 Navigation⁹.

Article 3

Fields for action by the Community

1. The measures necessary in order to create the Single European Sky shall be established in the following fields, whilst ensuring maximum safety standards for air navigation:
 - (a) organisation and use of the airspace and the relevant procedures;
 - (b) provision of air navigation services, including the economic aspects;
 - (c) air navigation equipment and systems and the associated procedures.
2. The measures set out in paragraph 1 shall aim to define the objectives and, where appropriate, the means of attaining these objectives in such a way as to safeguard the public interest.

Article 4

Organisation and use of the airspace

Measures on the organisation and use of airspace shall be such that:

- (a) the airspace ~~above the territory of the Community~~ **under the responsibility of Member States** is treated as a common resource constituting a continuum;
- (b) use of the airspace is flexible, with no permanent segregation and optimising the duration of any temporary segregation for military purposes;
- (c) sufficient capacity is made available to accommodate demand;**
- (d)** most flights take a straight line between the points of departure and destination or take the route closest to this straight line, **and can operate at their optimum flight level**, subject to compliance with the demands of safety, **defence, energy-saving,** environmental protection and **greater effectiveness in** the management of air traffic;
- (e)** the airspace is divided into air traffic control sectors giving priority to operational requirements;
- (f)** air traffic flow planning and management allow smooth, flexible air traffic making optimum use of the capacity available.

⁹ Convention as amended by the Protocol of 12 February 1981, and revised by the Protocol of 27 June 1997.

Article 5

Provision of air navigation services

Measures relating to the provision of air navigation services shall be such that:

- (a) definition and monitoring of application of the rules referred to in Article 1 are kept separate from operation of the air navigation services subject to these rules;
- (b) air navigation service providers hold regular, formal consultations with airspace users on the arrangements and costs for air navigation services to ensure that these users' needs are taken into account ~~in definition of~~, **while providing** these services;
- (c) air navigation service providers ensure appropriate transparency in air navigation services, in the form of publication of financial accounts and annual reports, **and performance indicators**, and regularly undergo an independent audit;
- (d) operation of air navigation services is harmonised to ensure integration and consistency of the operations of air navigation service providers, airspace users and airports;
- (e) co-operation between civil air navigation service providers is reinforced, in particular by facilitating the establishment of groupings of two or more service providers ;
- (f) co-operation between civil and military air navigation service providers is encouraged;
- (g) new services are established at the same time for all interested parties in the Member States concerned;
- (h) air navigation service providers exchange all data on the situation of flights during every phase of the flight in order to facilitate operation of air navigation services; access to these data shall be open to all concerned on a non-discriminatory basis, without prejudice to safety requirements;
- (i) the economic regulations favour more efficient provision of air navigation services and provision of services releasing capacity meeting Europe's needs;
- (j) mechanisms providing performance incentives are developed to stimulate new investment in this sector and to reward timely provision of high-quality services meeting **high safety and quality standards and** the demand from airspace users.

Article 6

Air navigation equipment and systems

Measures on air navigation equipment and systems shall be such that:

- (a) the technical and operational solutions allow uniform planning and operation of the European system, including interoperability;

- (b) creation of the Single European Sky favours the introduction of new technical and operational solutions for air navigation **where these improve safety, efficiency and/or capacity**;
- (c) the development and validation of technical and operational solutions **conform to programmes on the basis of advanced international standards**, meet airspace users' common needs and take account of the demand from such users with regard to choice of routes and flight profiles;
- (d) regulations are developed relating to on-board equipment in order to meet the implementation date.**

Article 7

Single Sky Committee

1. A committee, hereinafter referred to as “the Single Sky Committee”, is hereby set up, composed of the representatives of the Member States and chaired by the representative of the Commission.
- 2. The Single Sky Committee shall establish its own rules of procedures.**
- 3.** Each Member State shall appoint two representatives and two alternates.
- 4.** Non-Community States committed to air transport agreements with the Community shall be associated with the work of the committee, in accordance with the arrangements laid down in the agreements.

Article 8

Relations with third countries

When drafting the measures taken to implement this Regulation, the Commission shall keep open the possibility of extending the Single European Sky to countries which are not members of the Community, whether under bilateral agreements concluded with the non-member countries or within the framework of Eurocontrol.

Article 9

Relationship between the Commission and Eurocontrol

When drafting implementing rules for the measures referred to in Article 3, the Commission shall, where appropriate, endeavour to obtain the technical basis for these rules from Eurocontrol, for subjects where this organisation has relevant expertise.

Article ~~9~~10

Supervision and monitoring

1. The measures adopted pursuant to Article 3 shall define appropriate mechanisms for assisting the Commission in its responsibilities for supervising and monitoring application of those rules, including the creation of civil and military technical expertise.
2. The supervision and monitoring methods shall be based on the submission of regular reports by air navigation service providers on implementation of the measures adopted.

Article 11

Penalties

Member States shall lay down a system of penalties for breaches of the provisions of this Regulation and shall take all the measures necessary to ensure that these penalties are applied. The penalties thus provided for, shall be effective, proportionate and dissuasive.

Article ~~10~~12

Performance review

The Commission shall ensure the examination and comparison of air navigation performance involving, in particular, Eurocontrol's Performance Review Commission.

The Commission shall ensure the dissemination of best practice at the Community level.

Article ~~11~~13

Impact assessment

Every five years after the entry into force of this Regulation and for the first time no later than 30 June 2005, the Commission shall submit to the European Parliament and to the Council a report assessing the measures taken to create the Single European Sky.

For the purposes of drafting this report, the Commission may request the opinion of the Single Sky Committee.

The report shall contain an evaluation of the results achieved by the measures taken pursuant to this Regulation ~~in the various fields of action~~ **including appropriate information about the developments in the sector, in particular concerning economic, social, employment and technological aspects, as well as quality of service, and** in the light of the original objectives and of future needs.

Article ~~12~~14

Safeguards

This Regulation shall not prevent Member States from adopting or applying measures warranted by serious internal disturbances affecting the maintenance of law and order, in the event of war, serious international tension constituting a threat of war, or in order to carry out obligations they have accepted for the purpose of maintaining peace and international security.

Article ~~13~~15

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 Communities*.

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

Done at Brussels,

*For the European Parliament
The President*

*For the Council
The President*

Amended proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on the provision of air navigation services in the Single European Sky

(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 Commission¹⁰,

Having regard to the opinion of the Economic and Social Committee¹¹,

Having regard to the opinion of the Committee of the Regions¹²,

Acting in accordance with the procedure laid down in Article 251 of the Treaty¹³,

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 has confirmed the need for rules at Community level to distinguish between regulation and service provision and to introduce a system of authorisation **to preserve public interest requirements, most notably in terms of safety**, and a charging mechanism to stimulate cost-effectiveness.
- (3) Regulation (EC) No XXX/XX of the European Parliament and of the Council¹⁴ 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 XXX/XX of the European Parliament and of the Council of ... 2001 [on the organisation and use of the airspace

¹⁰ OJ C

¹¹ OJ C

¹² OJ C

¹³ OJ C

¹⁴ OJ L

in the Single European Sky]¹⁵. The establishment of a harmonised organisation of the provision of such services is important to respond adequately to the demand of airspace users and to operate air traffic safely and efficiently.

- (5) The verification of compliance by air navigation service providers and other relevant operators with Community requirements is predominantly a task for the Member States. It means that the authorities performing such verifications should be sufficiently independent of air navigation service providers.
- (6) Member States should ~~be permitted to~~ entrust to recognised **and technically experienced** organisations the verification and certification of compliance of air navigation service providers and other relevant operators with Community requirements.
- (7) Smooth operation of the air transport system also requires uniform, high safety standards of air navigation service providers. **The implementation of such safety requirements is without prejudice to the role and responsibilities of the European Safety Agency which, with regard to the creation of the Single European Sky, should have to be more clearly defined in the longer term.**
- (8) Arrangements should be proposed to overcome the lack of controllers, through the improvement **and harmonisation** of the procedures for **selection, authorisation, rating** and licensing, ~~and through the harmonisation of such procedures at Community level~~ **the mutual recognition of licences, and the development of recruitment programmes.**
- (9) **The Commission should monitor the development of recruitment programmes by Member States to determine whether it will be necessary to provide Community support for the development of these programmes.**
- (10) Whilst guaranteeing the continuity of service provision, a common system should be established for authorising air navigation services which constitutes a means for defining the rights and obligations of air navigation service providers.
- (11) The authorisation system should provide for the means to control access to the activity. It should take into account the need to facilitate the introduction of new services as well as new rules for service provision. Accordingly, authorisations should provide for the most adequate control compatible with the fulfilment of applicable requirements. It is also important to define non-discriminatory requirements in relation to the location and surveillance of a service provider, in particular of air traffic services, applying for authorisation.
- (12) Conditions attached to authorisations are necessary in order to attain public interest objectives for the benefit of airspace users and the air transport passengers. They should be objectively justified and should be non-discriminatory, proportionate and transparent **and compatible with applicable, internationally standards.**
- (13) The harmonisation of conditions attached to authorisations and of the procedures for the granting of authorisations should significantly facilitate the provision of air navigation services in the Community.

- (14)** Existing air navigation service providers should be allowed a reasonable period of time within which to adjust to the requirements of the new system of authorisation,
- (15)** The authorisations 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 where they obtained their authorisations, within the limits of the requirements of safety.
- (16)** 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 authorisation should provide for a framework to enable Member States to designate service providers for providing air traffic services, regardless of where they have been authorised.
- (17)** The provision of ~~ancillary services~~ **communication services, air navigation and surveillance services**, meteorological services and aeronautical information services should be organised under market conditions whilst taking into account the special features of such services **and simultaneously maintaining a high level of safety**.
- (18)** Cooperation between service providers, airspace users and other operators should be enhanced on a contractual basis.
- (19)** Air navigation service providers should establish and maintain close cooperation with military authorities responsible for activities that may affect air traffic, through appropriate arrangements.
- (20)** The accounts of all air navigation service providers should provide for maximum transparency: to this end, the accounts should be separated for each service and control centre.
- (21)** The introduction of harmonised principles and conditions for access to operational data should facilitate the provision of air navigation services and the operations of airspace users and airports under a new environment.
- (22)** Charging conditions applying to airspace users should be fair and transparent.
- (23)** User charges should provide remuneration for the facilities and services provided by air navigation service providers. Such services and facilities can, by their nature, only be provided by air navigation service providers themselves; in view of this monopoly situation, the level of user charges should be proportionate to the costs incurred in the provision of such facilities and services, taking into consideration the objective of economic efficiency, **while maintaining a high level of safety**.
- (24)** There should be no discrimination between airspace users for the provision of equivalent air navigation services.
- (25)** Air navigation service providers offer a certain number of 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 impose at, or as close as possible to, the point of use.

- (26) It is important to ensure the transparency of the costs to which such services or facilities 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.
- (27) There should be scope for modulating charges that contribute to maximising system-wide capacity. Financial incentives are 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.
- (28) **In the context of revenues raised to provide a reasonable return on assets, and in direct correlation with the saving made from efficiency improvements, it should also be possible to allow the establishment of a reserve to avoid a sudden increase in charges to airspace users at times of reduced levels of traffic.**
- (29) The Commission should examine the feasibility of organising a temporary financial aid for measures to increase the capacity of Europe's air traffic control system as a whole.
- (30) The establishment and imposition of charges on airspace users should be constantly reviewed by the Commission, in collaboration with the European Organisation for the Safety of Air Navigation ("Eurocontrol"), and in cooperation with national supervisory authorities and airspace users.
- (31) The performance of the air navigation services system as a whole at European level needs to be constantly examined, **with due regard to the maintenance of a high level of safety**, to check the effectiveness of the measures adopted and to propose further measures.
- (32) Owing to the particular sensitivity of information concerning 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 service providers,
- (33) **The associations of airspace users, of air navigation service providers and of manufacturing industry should be informed and consulted in an appropriate way on all measures concerning the technical aspects of the implementation of the Single European Sky.**
- (34) Since the objectives of the proposed action, namely to promote the safe and efficient provision of air navigation services, cannot be sufficiently achieved by the Member States, by reason of the transnational scale of this action, and can therefore be better achieved at Community level, whilst ensuring that the implementing procedures take account of the 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 those objectives.

(35) Since most of the measures necessary for the implementation of this Regulation are measures of general scope within the meaning of Article 2 of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission¹⁶, they should be adopted by use of the regulatory procedure provided for in Article 5 of that Decision. However, in accordance with Article 2(c) of that Decision, some measures should be adopted by use of the advisory procedure provided for in Article 3 of that Decision,

HAVE ADOPTED THIS REGULATION:

Chapter I

GENERAL

Article 1

Scope

This Regulation shall apply to the provision of air navigation services for civil aviation, including air traffic services, meteorological services, search and rescue services and ancillary services providing communication, navigation and surveillance infrastructure and aeronautical information services as specified in Annex I, in accordance with and within the scope of Regulation (EC) No XXX/XX [laying down the framework for the creation of the Single European Sky].

Article 2

Definitions

For the purposes of this Regulation the definitions set out in Article 2 of Regulation (EC) No XXX/XX [laying down the framework for the creation of the Single European Sky] shall apply.

The following definitions shall also apply:

- (a) “national supervisory authority” means the body or bodies, appointed by a Member State for the supervision of air navigation service providers;
- (b) “recognised organisation” means a private or public body, recognised in conformity with Article 4, carrying out assessment work for a national supervisory authority;
- (c) “authorisation” means a permission which is granted by a Member State and which certifies that an air navigation service provider is suitable for providing a specific service;
- (d) “bundle of services” means two or more air navigation services as listed in Annex I;

¹⁶ OJ L 184, 17.7.1999, p. 23.

- (e) “air traffic services” means all flight information services, alerting services, air traffic advisory services and air traffic control services, including area control services, approach control services and aerodrome control services as defined in Annex I;
- (f) “designation” means an appointment by a Member State or Member States in accordance with this Regulation, giving a service provider the responsibility for providing air traffic services on an exclusive basis;
- (g) “ancillary services” means communication, navigation and surveillance services as further defined in Annex I;
- (h) “airspace block” means an airspace of defined dimensions, above land or waters, within which air navigation services are provided;
- (i) “functional airspace block” means an airspace block of optimally defined dimensions;
- (j) “operational data” means information and/or data used by air navigation service providers and airspace users during the execution of their operational activities;
- (k) “charges” means the price related to the operating and investment costs of air navigation services and related facilities.

Article 3

National supervisory authorities

1. A national supervisory authority shall be established by each Member State in order to assume the relevant responsibilities and obligations under the requirements of this Regulation. The national supervisory authorities shall be independent of the 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.
2. The national supervisory authority shall ensure the appropriate oversight and enforcement of this Regulation, in particular with regard to the safe and efficient operations of air navigation service providers. To this end, the national supervisory authority shall perform proper inspections and surveys to verify compliance with the requirements of this Regulation.
3. Member States shall inform the Commission of the names and addresses of the national supervisory authorities and of the measures undertaken to ensure compliance with the provisions of paragraph 1. Member States may conclude an agreement on the supervisory role provided for in this Article in respect of regional service providers.
4. Member States shall notify any changes to the information supplied under paragraph 3, within one month of their introduction.

Article 4

Recognised organisations

1. National supervisory authorities may decide with respect to air navigation service providers that operate under their responsibility to instruct recognised **and technically experienced** organisations to undertake fully or in part the inspections and surveys.
2. Member States may only recognise those organisations which fulfil the requirements laid down in paragraph 4 and which have submitted to the national supervisory authorities a request for recognition.
3. A recognition granted by a national supervisory authority shall be valid within the Community. National supervisory authorities may instruct any of the recognised organisations located in the Community to undertake the inspections and surveys under Article 3(2).
4. Recognised organisations shall comply with the minimum requirements set out in Annex II together with any further measures defined in accordance with the procedure referred to in Article 19(2), including the procedures for the granting of recognition, their monitoring and the working relationship and the liability between recognised organisations and the national supervisory authorities.

Article 5

Safety requirements

1. The Eurocontrol Safety Regulatory Requirements (ESARRs) and subsequent amendments to those requirements shall be identified and adopted in accordance with the procedure referred to in Article 19(2). Publication shall take the form of references to such ESARRs in the *Official Journal of the European Communities*.
2. Paragraph 1 shall be without prejudice to Article 1(2) of Regulation (EC) No XXX/XX of the European Parliament and of the Council¹⁷ [on establishing common rules in the field of civil aviation and creating a European Aviation Safety Agency].

Article 6

Licensing and training of controllers

~~The mobility of air traffic controllers together with enhanced training conditions shall be developed~~ **On the basis of a Commission proposal** ~~by the European Parliament and of the Council, on the basis of a Commission proposal~~ **shall, where appropriate, adopt measures to overcome the lack of controllers and air traffic management personnel.**

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Chapter II

RULES FOR THE PROVISION OF SERVICES

Article 7

System of authorisation

1. The provision of air navigation services shall be subject to a system of authorisation certifying the suitability of service providers to provide such services **and enabling co-operation between service providers**.
2. Member States shall issue and monitor authorisations for air navigation services. Authorisations may be granted for each separate air navigation service as listed in Annex I or for a bundle of such services.
3. Member States shall accept any authorisation granted in the Community according to the requirements of this Article. Without prejudice to international agreements and conventions to which the Community is a contracting party, providers of air traffic services shall be owned and continue to be owned directly, or through majority ownership, by Member States and/or nationals of Member States. They shall at all times be effectively controlled by such Member States or such nationals.
4. Air navigation service providers meeting the requirements of the system of authorisation shall be entitled to an authorisation for the purpose of providing air navigation services. To that end, air navigation service providers shall apply to the national supervisory authority of the Member State where they have their principal place of operation and, if any, their registered office.
5. Authorisations shall specify the conditions in terms of rights and obligations of air navigation service providers, **with particular regard to safety**, that are objectively justified in order to meet the objectives of this Regulation. The conditions attached to authorisations and the procedures for their grant shall:
 - (a) comply with the general lines of approach set out in Annex III;
 - (b) be non-discriminatory, proportionate and transparent,
 - (c) avoid any conflict of interest in the management or operation of air navigation services and ensure fair access by all airspace users,
 - (d) reflect the public interest nature of air navigation services.
6. The authorisation system, including harmonised conditions in respect of the various air navigation services and the relevant conditions and procedures for the granting of authorisations, shall be established in accordance with the procedure referred to in Article 19(2).
7. Providers of air navigation services at the time of entry into force of this Regulation shall be authorised to continue to do so, provided that they comply with paragraphs 1 to 5 within a period of six months of the adoption of implementing rules for authorisations in accordance with paragraph 5.

8. No air navigation service provider established in the Community shall be permitted to operate within the Community unless it has been granted the appropriate authorisation.

Article 8

Designation of service providers

1. The provision of air traffic services shall be subject to a system of designation allowing the service provider to operate on an exclusive basis within specific airspace blocks and defining the obligations and requirements of the operation. Member States shall designate service providers to provide air traffic services in respect of the airspace over their territory. For this purpose, Member States may designate any service providers holding a valid authorisation within the Community.
2. Air traffic services that are, at the time of entry into force of this Regulation, operated by an air navigation service provider in respect of specific airspace blocks shall entitle that service provider to be designated for the same services in the same airspace blocks for a maximum period of three years without prejudice to the application of the provisions of Article 5 of Regulation (EC) No XXX/XX [*airspace regulation*]. **Air navigation service providers shall be subject to continuous operational and safety improvements.**
3. With regard to ancillary services, meteorological services and aeronautical information services, the granting of authorisations confers to service providers the right of providing such services within the Community, subject to their notification to the relevant national supervisory authorities of the Member States and to the Commission of the airspace blocks in respect of which such services will be provided.
4. Air navigation service providers shall provide their services in an open, non-discriminatory and transparent manner. Such services shall be delivered in accordance with the terms of the relevant authorisations and, where appropriate, of the relevant designations.
5. In respect of functional airspace blocks as laid down in accordance with Article 5 of Regulation (EC) No XXX/XX [*airspace regulation*] and when the configuration of such functional airspace blocks differ from that of airspace blocks assigned on the basis of paragraphs 1 and 2 of this Article, Member States shall designate service providers to deliver air traffic services in functional airspace blocks. When a functional airspace block extends over the territory of more than one Member State, the Member States concerned shall, within one month of the establishment of the functional airspace block, jointly designate the service providers.

Such service providers shall be immediately notified to the Commission.

Article 9

Relations between service providers

Air navigation service providers may avail themselves of the services of other service providers, in particular for ancillary services, meteorological services and aeronautical information services. In such cases, 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 the providers. Those arrangements shall comply with the relevant provisions of this Regulation.

Article 10

Relations with military authorities

1. ~~Air navigation service providers~~ **Member States** shall take the necessary steps ~~with a view to entering~~ **to ensure that air navigation service providers enter** into written agreements or equivalent legal arrangements with military authorities for the blocks of airspace where they are designated. Those arrangements shall set out the specific obligations of each party, including the scope and procedures for exchanging data and for the transfer of control following the adoption of the measures referred to in Article 12 of Regulation (EC) No XXX/XX [*framework regulation*]. Those arrangements shall comply with the relevant provisions of this Regulation.
2. As long as Member States have separate entities to provide air traffic services to civil and military air traffic, they shall ~~keep inform~~ the Commission **informed** of the way in which the cooperation between such entities is organised **and the actions taken to enhance this cooperation or, where possible, to integrate such entities with one another.**

Article 11

Unbundling of accounts

1. Air navigation service providers, whatever their system of ownership or legal form, shall draw up, submit to audit and publish their annual accounts in accordance with International Accounting Standards adopted by the Community.
2. When providing a bundle of services, air navigation service providers shall, in their internal accounting, keep separate accounts for each service as listed in Annex I, 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 carried out by separate undertakings. When providers of air traffic services operate within functional airspace blocks, they shall, in their internal accounting, keep separate accounts for each control centre responsible for that block.
3. Service providers shall inform the Commission of the rules for the allocation of assets, liabilities, expenditure and income which service providers follow in drawing up the separate accounts referred to in paragraph 2.

4. Member States or any competent authority which they designate, as well as the Commission, shall have a right of access to the accounts of service providers.

Article 12

Access to and protection of data

1. Operational data shall be exchanged in real-time between service providers and between such service providers and airspace users to facilitate the operational needs of both. **It shall only be used for operational purposes.**
2. Access to operational data shall be granted to all authorised air navigation service providers, airspace users and other operators concerned on a non-discriminatory basis.
3. Each service provider shall establish standard conditions of access to its operational data from other service providers and airspace users. National supervisory authorities shall approve such standard conditions **and take the necessary measures to ensure that this data is only used for operational purposes.** Detailed rules relating to such conditions shall be established, where appropriate, in accordance with the procedure referred to in Article 19(2).

Chapter III

CHARGING SCHEMES

Article 13

General

A charging scheme for air navigation services shall be established, in accordance with the requirements of Articles 14 and 15, that contributes to the achievement of greater transparency with respect to the determination, imposition and enforcement of charges to airspace users. This charging scheme shall also be consistent with the provisions of Article 15 of the 1944 Chicago Convention on International Civil Aviation **and, where relevant, with Eurocontrol's Multilateral Agreement relating to Route Charges.**

Article 14

General principles

1. The charging scheme shall proceed by the account of costs for air navigation services incurred by service providers on behalf of airspace users.

It shall allocate the costs of air navigation services among categories of users and shall develop a charging policy.

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 cost to be taken into account shall be those assessed in relation to the facilities and services, provided for and implemented under the 24th edition of 1998 of the ICAO Regional Air Navigation Plan, European Region Doc No 7754.
 - (c) The cost of different air navigation services shall be identified separately as provided for in Article 11.
 - (d) Cross-subsidy between different air navigation services shall be clearly identified.
 - (e) Costs that are external to the operation of facilities and of services to airspace users, such as environmental costs, shall become a component of user charges in whichever way is most appropriate.
 - (f) 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.
3. As far as charges are concerned, the following principles in particular shall apply:
 - (a) Charges shall be set for the availability of air navigation services under non-discriminatory conditions. No distinction shall be made between charges imposed on different airspace users for the use of the same service in relation to the nationality or category of the airspace user.
 - (b) Charges shall reflect the cost of air navigation services and facilities used by airspace users who generate them.
 - (c) Transparency of the cost-base for charges shall be guaranteed. Standards shall be set for the provision of information by the service providers in order to permit reviews of the provider's forecasts, actual costs and income. Information shall be regularly exchanged between the national supervisory authorities, service providers, airspace users, the Commission and Eurocontrol.
 - (d) Charges shall ~~encourage~~ **allow for** the safe, efficient and effective provision of air navigation services at the lowest possible cost **compatible with the maintenance of a high level of safety** and shall stimulate integrated service provision. They may provide incentives and deterrents consisting of financial advantages and disadvantages which apply to air navigation service providers and/or airspace users. They may also provide revenues to benefit projects designed to assist specific categories of 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 19(2).

Article 15

Review of charges

1. The Commission shall provide for the ongoing review of compliance with the principles and rules referred to in Article 13 and 14, acting in collaboration with, in particular, national supervisory authorities. The Commission may also establish the necessary mechanisms for making use of Eurocontrol expertise.
2. At the request of one or more Member States which consider that the 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 by service providers. Within two months of receipt of a request and after consulting the “Single Sky Committee” in accordance with the procedure referred to in Article 19(3), the Commission shall take a decision on the application of Articles 13 and 14 and shall decide whether the service provider may continue to apply the principle or rule concerned.
3. The Commission shall communicate its decision to the Member States and to the service provider 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 16

Performance regime

Detailed rules for the submission of information required pursuant to Article 10 of Regulation (EC) No XXX/XX [*framework regulation*] shall be established in accordance with the procedure referred to in Article 19(2) of this Regulation, with a view to allowing the comparison and improvement of air navigation service provision within the Single Sky. The submission of this information shall:

- (a) promote the wide performance of a network of air navigation service providers within the Community;
- (b) offer a prospect of enabling air navigation service providers to deliver the required services;
- (c) improve the consultation process between airspace users and air navigation service providers;

- (d) allow the identification and the promotion of best practice, **in particular by means of a set of safety indicators**.

Article 17

Adjustment to technical progress

1. In order to make adaptations to technical developments, adjustments may be made, in accordance with the procedure referred to in Article 19(2), to:
 - (a) the Annexes;
 - (b) the reference to the ICAO Regional Air Navigation Plan contained in Article 14(2).
2. The Commission shall publish implementing rules adopted on the basis of this Regulation in the *Official Journal of the European Communities*.

Article 18

Confidentiality

National supervisory authorities shall not disclose information covered by the obligation of professional secrecy, in particular information about service providers, their business relations or their cost components.

The first paragraph shall be without prejudice to the right of national supervisory authorities to mandate disclosure 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 service providers in the protection of their business secrets.

Moreover, the first paragraph shall not preclude publication of information on the conditions and performance of service provision which does not include information of a confidential nature as required by Article 16.

Article 19

Committee procedures

1. The Commission shall be assisted by the “Single Sky Committee” instituted by Article 7 of Regulation (EC) No XXX/XX [*framework regulation*].
2. Where reference is made to this paragraph, the regulatory procedure laid down in Article 5 of Decision 1999/468/EC shall apply, in compliance with Article 7 and Article 8 thereof.

The period provided for in Article 5(6) of Decision 1999/468/EC shall be one month.

3. Where reference is made to this paragraph, the advisory procedure laid down in Article 3 of Decision 1999/468/EC shall apply, in compliance with Article 7 and Article 8 thereof.

Article 20

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 Communities*.

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

Done at Brussels,

For the European Parliament
The President

For the Council
The President

ANNEX I

AIR NAVIGATION SERVICES

Air traffic services

- (1) **Area control services**, means air traffic control for controlled flights in control areas. Air traffic control is a service provided for the purpose of preventing collisions between aircraft, and on the manoeuvring area between aircraft and obstructions, and expediting and maintaining an orderly flow of air traffic.
- (2) **Approach control services**, means air traffic control service for arriving or departing controlled flights.
- (3) **Aerodrome control services**, means air traffic control service for aerodrome traffic.

Other services

- (4) **Search and rescue services**, means a service to provide assistance to aircraft in distress and to survivors of aircraft accidents.
- (5) **Meteorological services**, means a service to supply operators, flight crew members, air traffic services units, search and rescue services units, airports and other concerned with the conduct or development of air navigation with the meteorological information necessary for the performance of their respective functions.
- (6) **Aeronautical information services**, means a service provided for the purpose of ensuring the flow of information necessary for the safety, regularity, and efficiency of international air navigation.

Ancillary services

- (7) **Communication services**, means a communication service provided for any aeronautical purpose.
- (8) **Navigation services**, means a navigation service provided for any aeronautical purpose.
- (9) **Surveillance services**, means a surveillance service provided for any aeronautical purpose.

ANNEX II

MINIMUM 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 above mentioned entities, published and continually upgraded and improved through research and development programmes;
- not be **economically linked to or** controlled by air navigation service providers, or **be economically linked to or controlled** by others engaged commercially in the provision of air navigation services or in air transport services;
- be established with a significant **and qualified** 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 and to the Commission;
- have defined and documented its policy and objectives for, and commitment to, quality and has ensured that this policy is understood, implemented and maintained at all levels in the organisation;
- have developed, implemented and maintains 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 administration of the Member State in which it is located.

ANNEX III

CONDITIONS WHICH MAY BE ATTACHED TO AUTHORISATIONS

1. General information relating to

- the recipient of the authorisation;
- a general description of the purpose of the authorisation;
- confirmation of the authority of the issuing body to issue the authority;
- comprehensive references to the governing legislation under which the authorisation is issued and under which it will operate;
- a clear specification of the period for which the authorisation is to run;
- the notice period required for the authorised service provider to surrender the authorisation or for the national supervisory authority to revoke it;
- a definition of terms referred to in the authorisation.

2. Conditions relating to:

- the organisational structure and ownership of the service provider, including the prevention of conflict of interest;
- the financial strength of the service provider and insurance in respect of liability risks;
- the suitability of the holder of the authorisations, particularly in terms of past experience and credibility, safety and quality management systems and processes, human resource policies **and adequate staffing plans for all categories of air traffic management personnel**;
- the provision of information reasonably required for the verification of compliance with applicable conditions, including the regular publication by the service providers of business plans, financial and operational data and the reporting of safety occurrences;
- the management of assets relevant to the provision of the authorised service, including capital and human resources;
- the non-discriminatory access to services from airspace users and the required level of performance of such service, including safety and interoperability levels;
- ring-fencing or restriction of operation of business other than those related to the provision of air navigation services;
- any other legal conditions which are not specific to air navigation services;

- measures taken by Member States in accordance with public interest requirements recognised by the Treaty specifically in relation to public morality, public security, including the investigation of criminal activities, and public policy.

Amended proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on the organisation and use of the airspace in the Single European Sky

(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 Commission¹⁸,

Having regard to the opinion of the Economic and Social Committee¹⁹,

Having regard to the opinion of the Committee of the Regions²⁰,

Acting in accordance with the procedure laid down in Article 251 of the Treaty²¹,

Whereas:

- (1) The creation of the Single European Sky requires a harmonised approach for regulation of the organisation and the use of airspace.
- (2) The report of the High Level Group on the Single European Sky (hereinafter: “the High Level Group”) has confirmed the need for rules at Community level to design, regulate and strategically manage airspace on a European basis and enhance air traffic flow management.
- (3) The Communication of the Commission on the creation of the Single European Sky²², calls for structural reform to permit the creation of the Single European Sky by way of integrated management of airspace and the development of new concepts and procedures of air traffic management.
- (4) Regulation (EC) No XXX/XX of the European Parliament and of the Council²³ lays down the framework for the creation of the Single European Sky,

¹⁸ OJ C

¹⁹ OJ C

²⁰ OJ C

²¹ OJ C

²² COM(2001) 123 final.

²³ OJ L

- (5) Airspace is a common resource and needs to be used flexibly, ensuring fairness and transparency for all users whilst taking into account security and defence needs of Member States and their commitments in international organisations.
- (6) 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.
- (7) The activities of the European Organisation for the Safety of Air Navigation (“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. **Therefore it is important that this regulation also takes due account of the European Air Traffic Management network beyond the Community.**
- (8) A single airspace should be established for en-route air traffic in the upper airspace; the interface between such airspace and the lower, that is regional and local, airspace should be identified accordingly.
- (9) The delineation of airspace wherein air traffic services are to be provided should be related to the need for efficient services, rather than to national boundaries. **The plan for creating functional airspace blocks should take into account, whenever possible and appropriate, the recommendations of Eurocontrol.**
- (10) ~~Airspace users face disparate conditions of access to, and freedom of movement within, the Community airspace. This is due to t~~ The lack of harmonisation in the classification of airspace **has an impact on its optimal operational organisation.**
- (11) Constraints in the definition of the route network cause concentration of air traffic flows at fixed crossing points or junctions of airways whilst the ~~principle~~ **introduction of direct optimised routings, subject to the maintenance of a high level of safety,** is the preferred, economical and ecological way to use Community airspace.
- (12) It is essential to achieve a common, harmonised airspace structure, to base the present and future allocation of airspace on common principles, and to design and manage airspace in accordance with harmonised rules.
- (13) It is desirable to extend that harmonised airspace structure to the lower airspace.
- (14) Variations in the organisation of civil-military cooperation in the Community prevent uniform and timely airspace management and the implementation of changes. The success of the Single European Sky is dependent upon an effective cooperation between civil and military authorities, **at national level and within the European Union.**
- (15) There should be an effective functioning of the flexible use of airspace concept and collaborative management to smoothly adapt military training with civil air traffic; it is necessary to optimise the location, size and time periods of usage of sectors of airspace allocated to military needs, especially during peak periods for civil air traffic and in high-density airspace.
- (16) Military operations should be safeguarded whenever the application of common principles and criteria is detrimental to their safe and efficient performance.

- (17) Adequate measures should be introduced to improve the effectiveness of air traffic flow management, **in order to assist existing operational units, including, where appropriate, the Eurocontrol Central Flow Management Unit, to ensure efficient flight operations.**
- (18) 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, Eurocontrol should be permitted to develop draft measures, under appropriate arrangements subject to the observance by Eurocontrol of the conditions to be included in a framework of cooperation between the Commission and Eurocontrol.
- (19) The associations of airspace users, of air navigation service providers and of manufacturing industry should be informed and consulted in an appropriate way on all measures concerning the technical aspects of the implementation of the Single European Sky.**
- (20)** Since the objectives of the proposed action, namely to establish a European airspace as a single operating airspace, cannot be sufficiently achieved by the Member States, by reason of the transnational scale of this action, and can therefore be better achieved at Community level, whilst ensuring that the implementing procedures take account of the 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 those objectives.
- (21)** Since the measures necessary for the implementation of this Regulation are measures of general scope within the meaning of Article 2 of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission²⁴, they should be adopted by use of the regulatory procedure provided for in Article 5 of that Decision,

HAVE ADOPTED THIS REGULATION:

Chapter I

GENERAL

Article 1

Scope

1. This Regulation concerns the organisation and the use of airspace in accordance with, and within the scope of, Regulation (EC) No XXX/XX [laying down the framework for the creation of the Single European Sky].
2. This Regulation shall apply to the airspace where Member States designate air navigation service providers as provided for in Article 8 of Regulation (EC) No XXX/XX of the European Parliament and of the Council²⁵ [*service provision*].

²⁴ OJ L 184, 17.7.1999, p. 23.

²⁵ OJ L

Article 2

Objective

The objective of this Regulation is to establish a Community airspace as a single operating airspace where common procedures for design, planning and management ensure the efficient and safe performance of air traffic management.

The use of Community airspace shall support the operation of the air navigation services as a coherent and consistent whole in accordance with the provisions of Regulation (EC) No XXX/XX [*service provision*].

Article 3

Definitions

For the purposes of this Regulation the definitions set out in Article 2 of Regulation (EC) No XXX/XX [*framework regulation*] shall apply.

The following definitions shall also apply:

- (a) “single operating airspace” means **an airspace in which** uniform airspace management procedures and **common** safety standards **are applied to ensure the efficient and safe** ~~in the~~ provision of Air Traffic Control;
- (b) “airspace design” means an appropriate, efficient and effective process for structuring, dividing and categorising airspace together with the planning of routes and airspace;
- (c) “flight information region” means an airspace of defined dimensions within which flight information services and alerting services are provided;
- (d) “division level” means the boundary between upper and lower airspace;
- (e) “upper airspace” means the airspace above a certain flight level;
- (f) “lower airspace” means the airspace below a certain flight level;
- (g) “flight level” means a surface of constant atmospheric pressure which is related to specific pressure datum 1013.2 hectopascals and is separated from other such surfaces by specific pressure intervals;
- (h) “airspace block” means an airspace of defined dimensions, above land or waters, within which air navigation services are provided;
- (i) “functional airspace block” means an airspace block of optimally defined dimensions;
- (j) "area control centre" means an operational unit established to provide air traffic control services to air traffic in a block of airspace under its jurisdiction;

- (k) “airspace classification” means the International Civil Aviation Organisation (ICAO) classification of airspaces alphabetically designated as classes A to G, as specified in Appendix 4 to the twelfth edition of July 1998 of Annex 11 to the 1944 Chicago Convention on International Civil Aviation, also defined as airspaces of defined dimensions, alphabetically designated, within which specific types of flight may operate and for which air traffic services and rules of operation are specified;
- (l) “~~direct~~ **optimised** routing” means an aircraft operation allowing an aircraft in flight to proceed directly between two points ~~outside the scheme of routes~~ **provided that technological means exist to support this operation**;
- (m) “route network” means a network of specified routes for channelling the flow of air traffic as necessary for the provision of air traffic services.
- (n) “sector” means a subdivision of the totality of ~~control tasks~~ **the airspace block** into manageable airspace portions at which throughput and capacity can be measured;
- (o) “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;
- (p) “airspace management” means a planning function with the primary objective of maximum utilisation of available airspace by dynamic time-sharing and, at times, the segregation of airspace among various categories of airspace users based on short-term needs;
- (q) “air traffic flow management” means a service established with the objective of contributing to a safe, orderly and expeditious flow of air traffic by ensuring that air traffic control capacity is utilised ~~to the maximum extent possible~~ **in a safe and efficient way**, and that traffic volume is compatible with the capacities declared by the appropriate air traffic services providers;
- (r) “collaborative decision making” means a process for exchanging information between air traffic service providers, airport operators, air traffic flow management providers and airspace users to instil more flexibility in slot/route allocation and flight coordination processes in order to optimise utilisation of scarce capacity.

Chapter II

AIRSPACE ARCHITECTURE

Article 4

Creation of a European Upper Flight Information Region

1. Taking due account of ICAO requirements, as specified in the twelfth edition of July 1998 of Annex 11 to the 1944 Chicago Convention on International Civil Aviation, a single European Upper Flight Information Region (EUIR) shall be established in the upper airspace.

2. The division level between upper and lower airspace shall be set at flight level 285 **subject to marginal deviations decided in accordance with the procedure referred to in Article 16(2) and that are justified by a safe, orderly, efficient and expeditious flow of air traffic and an optimal provision of air traffic services.**
3. Within three years after the establishment of the EUIR **and in the light of progress achieved**, the European Parliament and the Council shall, on the basis of a proposal from the Commission, extend the concept referred to in paragraph 1 to include the creation of a European Flight Information Region in the lower airspace.
4. The Commission shall take the necessary measures in order to have the EUIR recognised by ICAO as required by the tenth edition of July 1997 of Annex 15 to the 1944 Chicago Convention on International Civil Aviation. The Commission, in collaboration with Eurocontrol, shall also organise the publication of a single aeronautical information relating to the EUIR through the consolidation of existing national aeronautical information. This publication shall incorporate all changes to requirements and procedures introduced by the implementation of the Single European Sky.
5. **In the performance of its tasks, the Commission shall take account of the obligations stemming from regional agreements concluded within ICAO in relation to airspace where the provision of air traffic services is entrusted to Member States.**

Article 5

Reconfiguration of the upper airspace

1. The EUIR shall be reconfigured into functional airspace blocks of minimum size on the basis of safety and efficiency. The borders of such functional airspace blocks do not need to coincide with national boundaries. Functional airspace blocks shall be created to support the provision of air traffic services within area control centres responsible for an optimal size of airspace in the EUIR.
2. Functional airspace blocks shall be defined in accordance with the procedure referred to in Article 16(2). The definition of such functional airspace blocks shall:
 - (a) support **safely and** efficiently the existing and future pattern of air traffic;
 - (b) ensure that each airspace block is designed to maximise the efficiency of European airspace as a whole **with due regard to the maintenance of a high level of safety**;
 - (c) take into account the human and capital resources of various air navigation service providers;
 - (d) ~~minimise the transaction costs~~ **optimise coordination** between various area control centres;
 - (e) ensure coherence between the configurations of upper and lower airspace.

Article 6

Airspace classification

The EUIR shall be designated in accordance with a harmonised airspace classification to ensure the seamless provision of air navigation services throughout the Community and to establish a single category of environment within which all air traffic is known to providers of air traffic services, both with position and with flight intentions.

This classification shall be established on a common and simplified application of the classification of airspace currently prescribed in chapter 2 of twelfth edition of July 1998 of Annex 11 to the 1944 Chicago Convention on International Civil Aviation.

The necessary implementing rules in the fields covered by the first and second paragraphs shall be prescribed in accordance with the procedure referred to in Article 16(2) of this Regulation.

Article 7

*~~Direct~~ **Optimised** routing in the upper airspace*

Subject to safety analysis **and taking account of overall capacity aspects**, air navigation service providers shall organise the phased implementation of ~~direct~~ **optimised** routings in the EUIR as the optimum economic and environmentally friendly usage of Community airspace.

Service providers shall regularly report to the Commission on this implementation.

Article 8

Uniform airspace design

The structuring, division and categorising of airspace together with the planning of routes shall rely on a uniform, efficient and effective design process within the agreed concept of operation. To this end, airspace rules, common principles and criteria for sector design, especially the design of cross-border sectors, and route design shall be established on the basis of the “Concept and Criteria for Medium Term EUR Route Network and Associated Airspace Sectorisation”, EATMP ARN Version 4 issued by Eurocontrol on 1 April 2001.

The implementing rules in the fields covered by the first paragraph shall be adopted in accordance with the procedure referred to in Article 16(2).

Article 9

Consistency with the design for lower airspace

On the basis of the criteria specified in Article 5(2), as regards the concept of functional airspace blocks, the planning and design of lower airspace shall be harmonised to be consistent with upper airspace and shall take account of the environment at and around airports in accordance with the procedure referred to in Article 16(2). The concept shall be extended to establish similar blocks in the lower airspace, particularly to address cross border problems for short to medium flights.

Air navigation service providers shall harmonise operations and practices concerning approaches and departures of aircraft to/from airports and their movement on the airport surface. A common procedure for the definition of such practices shall be laid down in accordance with the procedure referred to in Article 16(2), including risk assessment methods to verify the local feasibility of the procedures.

Chapter III

CIVIL-MILITARY COORDINATION

Article 10

Civil-Military Cooperation

1. Member States shall ensure an efficient allocation and use of airspace by civil and military airspace users through the uniform and full application of the concept of the Flexible Use of Airspace.
2. Member States shall facilitate the organisation of civil-military cooperation particularly in all aspects of airspace management and air-traffic flow management. Civil and military providers of air navigation services shall exchange data under the agreements provided for in Article 10 of Regulation (EC) No XXX/XX [on the provision of air navigation services in the Single European Sky].
3. Taking into account the general conditions for air traffic flow management, as defined under Article 13, criteria shall, in accordance with the procedure referred to in Article 16(2), be established:
 - (a) for the use of segregated airspace, including factors for the determination of horizontal and vertical extensions, the location of such airspace, and its sub-division into functional elements to be activated according to demand;
 - (b) for the application of the concept of flexible use of airspace.

The criteria shall implement the principles provided for in Article 4 of Regulation (EC) No XXX/XX [*framework regulation*].

4. Member States shall encourage the full integration of air defence in airspace management ensuring full exploitation of airspace under certain agreed conditions and arrangements, taking into account national security requirements.
5. Without prejudice to international agreements and conventions to which the Community is a contracting party and in order to ensure the safety of civil aviation, Member States may require submission of a flight plan for any military flight entering the airspace where they have designated air traffic services providers in accordance with Article 8 and 9 of Regulation (EC) No XXX/XX [on the provision of air navigation services in the Single European Sky], regardless of the origin and/or the destination of the flight.

Article 11

Temporary exemption for adjustments

In the event of serious disturbance of military operations, one or more Member States may request the Commission to propose adjustments to the criteria defined in accordance with Article 10(3) in their territory. Pending the drafting of such adjustments the Commission shall exempt on a temporary basis the Member States from the application of these criteria.

Article 12

Information disclosure

Pursuant to Article 10 of Regulation (EC) No XXX/XX [*framework regulation*], Member States shall submit to the Commission the necessary information on the demand and actual use of airspace prohibited, closed, or restricted for military reasons, for further analysis and publication.

Chapter IV

FLOW MANAGEMENT

Article 13

Air Traffic Flow Management

Rules for air traffic flow management shall be established in order to optimise available capacities in the use of airspace and to enhance flow management processes. These rules shall be based on transparency and efficiency ensuring that capacity is provided flexibly and in a timely manner. They shall support a framework for operational decisions by air navigation service providers, airport owners and airspace users, based on Collaborative Decision Making. These rules shall cover:

- (a) a consistent route and traffic orientation policy defined in a single publication;
- (b) consistency between airport slots and slots assigned in the management of air traffic flows;
- (c) inconsistencies in flight planning;
- (d) options for diversion of air traffic from congested areas into routes in less congested areas;
- (e) priority rules in access to airspace, particularly during periods of congestion and crisis, **that allow the safe and orderly flow of traffic.**

The implementing rules shall be laid down in accordance with the procedure referred to in Article 16(2).

Chapter V

FINAL PROVISIONS

Article 14

Procedures

When drafting implementing rules covered by this Regulation, the Commission may, where appropriate, ask Eurocontrol to draw up draft measures on the basis of a work programme laid down by the Commission.

Article 15

Review of measures

1. In order to make adaptations to technical developments adjustments may be made, in accordance with the procedure referred to in Article 16(2), to:
 - (a) the flight level referred to in Article 4(2) of this Regulation;
 - (b) references to ICAO and Eurocontrol documents as referred to in Articles 3, 4, 6 and 8.
2. The Commission shall publish implementing rules adopted on the basis of this Regulation in the *Official Journal of the European Communities*.

Article 16

Committee Procedures

1. The Commission shall be assisted by the “Single Sky Committee” instituted by Article 7 of Regulation (EC) No XXX/XX [*framework regulation*].
2. Where reference is made to this paragraph, the regulatory procedure laid down in Article 5 of Decision 1999/468/EC shall apply, in compliance with Article 7 and Article 8 thereof.
3. The period provided for in Article 5(6) of Decision 1999/468/EC shall be one month.

Article 17

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 Communities*.

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

Done at Brussels,

For the European Parliament
The President

For the Council
The President

Amended proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on the interoperability of the European Air Traffic Management network

(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 Commission²⁶,

Having regard to the opinion of the Economic and Social Committee²⁷,

Having regard to the opinion of the Committee of the Regions²⁸,

Acting in accordance with the procedure laid down in Article 251 of the Treaty²⁹,

Whereas:

- (1) In order to create the Single European Sky, measures should be adopted in relation to equipment, systems and associated procedures with the objective of ensuring seamless operations of the air traffic management network consistent with the provision of air navigation services as provided for in Regulation (EC) No XXX/XX of the European Parliament and of the Council of ... 2001 on the provision of Air Navigation Services in the Single European Sky³⁰ and the organisation and use of airspace as provided for in Regulation (EC) No XXX/XX of the European Parliament and of the Council of ... 2001 [on the organisation and use of the airspace in the Single European Sky]³¹.
- (2) The report of the High Level Group on the Single European Sky (hereinafter referred to as: "the High Level Group") 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 standards³² where essential requirements, rules and standards are complementary and consistent.

²⁶ OJ C

²⁷ OJ C

²⁸ OJ C

²⁹ OJ C

³⁰ OJ L

³¹ OJ L

³² OJ C 136, 4.6.1985, p. 1

- (3) Regulation (EC) No XXX/XX of the European Parliament and of the Council³³ lays down the framework for the creation of the Single European Sky.
- (4) The air traffic management network is a complex, highly interactive structure involving large numbers of systems and components on the ground, in the air and in space including facilities, equipment, and computer hardware and software as well as the people that operate them.
- (5) The report of the High Level Group has confirmed that even though progress has been realised during the last few years towards a seamless operation of the air traffic management network in Europe, 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.
- (6) This low level of integration at Community level results in a number of severe inefficiencies and additional costs for procurement and maintenance and in difficulties in operational coordination.
- (7) The predominance of national technical specifications used in procurement, often developed between the air navigation service provider and the national manufacturing industry, has led to fragmentation of market equipment and does not facilitate the 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.
- (8) It is therefore in the interest of all those involved in the air traffic management to develop a new partnership approach allowing the balanced involvement of all, stimulating creativity and the sharing of knowledge, experience and risks; such partnership should aim at defining, in cooperation with the manufacturing industry, a coherent set of Community specifications that can fulfil the widest possible range of needs ~~from which an air navigation service provider can choose the elements that best suit its circumstances and limit the local adaptations as much as possible.~~
- (9) It is therefore appropriate to define essential requirements which will apply to the systems and constituents of the air traffic management network; in view of the complexity of the air traffic management network it has proven necessary to break it down to a number of systems.
- (10) The development and adoption of Community specifications concerning the air traffic management network, its systems and constituents is an appropriate means of defining the technical and operational conditions necessary to achieve the essential requirements; compliance with these Community specifications should create a presumption of conformity with the essential requirements.

³³

OJ L

- (11) For some systems that are important to the fulfilment of the essential requirements of this Regulation, implementation rules should be adopted; implementation rules should also be adopted to facilitate the coordination and introduction of new concepts in air traffic management; compliance with the implementation rules should be permanently maintained; these implementation rules should rely on rules and standards developed by international organisations such as Eurocontrol or ICAO.
- (12) 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, Eurocontrol should be permitted to develop draft measures, under appropriate arrangements subject to the observance by Eurocontrol of the conditions to be included in a framework of cooperation between the Commission and Eurocontrol.
- (13) In order to ensure separation between the rule-making and standardisation functions, Community specifications should predominantly be developed by the European standardisation bodies in conjunction with the European Organisation for Civil Aviation Equipment (“Eurocae”) and should take the form of European standards.
- (14) Eurocae is a non-profit making organisation in charge of preparing drafts of technical specifications for civil aviation equipment; its membership is open to all aviation stakeholders including, in particular, air navigation service providers, airspace users and manufacturing industry; Eurocae must establish formal relationships with the European standardisation bodies so that its specifications can be recognised as European standards according to the procedures set out by the European standardisation organisations.
- (15) Eurocontrol should also be permitted to develop, where necessary, Community specifications, subject to compliance with the principles of the Council Resolution of 7 May 1985 and in accordance with general Community standardisation procedures; such procedures should include as a minimum the observance of the principles of openness, transparency, impartiality, consensus, maintenance, public access to specifications, efficiency, accountability and coherence; detailed provisions to that effect will be included in a document forming the framework of cooperation with Eurocontrol.
- (16) The procedures governing the assessment of conformity or suitability of 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 directives³⁴; as far as necessary these modules should be expanded to cover specific requirements of the industries concerned.
- (17) The market concerned is of small size and consists of systems and constituents of an almost exclusive use to air traffic management purposes and not destined to 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

³⁴ OJ L 220, 30.8.1993, p. 23.

obligation on manufacturers to affix the CE mark to certain constituents in order to certify their compliance with other Community provisions relating to them.

- (18) The putting into service, renewal or upgrading of air traffic management systems, should be subject to verification of compliance with the essential requirements; this compliance is based on implementation rules; use of Community specifications should create a presumption of conformity to the essential requirements; depending on the system, the intervention of a notified body should be deemed necessary in particular for safety reasons.
- (19) In accordance with the conclusions of the report of the High Level Group, the Commission should consult industry with a view to facilitating the establishment of a coherent strategic management programme for the introduction of new concepts in air traffic management.
- (20) The full application of the provisions of this Regulation should be done according to a transition strategy which should endeavour to maintain the objective of the seamless operation of the air traffic management network while not creating unjustified cost-benefit barriers to the preservation of the existing infrastructure.
- (21) Since the objectives of the proposed action, namely to achieve interoperability within the Community air traffic management network, cannot be sufficiently achieved by the Member States and can therefore, by reason of its wide scale, be better achieved at Community level, 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 those objectives.
- (22) Within the framework of the relevant Community legislation, due account shall 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; an efficient and appropriate use of frequencies exclusively allocated to and managed by the aviation sector shall be ensured.
- (23) ~~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 systems³⁵, is limited to obligations of awarding entities; the present Regulation is more comprehensive in that it addresses obligations of all actors, including air navigation service providers, airspace users, manufacturing industry and airports, and allows both for stipulating rules applicable to all, as well as adoption of Community specifications which, while being of voluntary use, give presumption of conformity to the essential requirements. Therefore Directive 93/65/EEC should be repealed.
- (24) Since ~~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 systems³⁶ has become obsolete, it should be repealed.

³⁵ OJ L 187, 29.7.1993, p. 52.

³⁶ OJ L 95, 10.4.1997, p. 16.

- (25) The measures for the application of Directive 93/65/EEC as set out in Annexes I, II and III to ~~Commission~~ Regulation (EC) No 2082/2000 of 6 September 2000 adopting Eurocontrol standards and amending Directive 97/15/EC, adopting Eurocontrol standards and amending ~~Council~~ Directive 93/65/EEC³⁷ are compatible with the provisions of this Regulation.
- (26) Since most of the measures necessary for the implementation of this Regulation are measures of general scope within the meaning of Article 2 of ~~Council~~ Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission³⁸, they should be adopted by use of the regulatory procedure provided for in Article 5 of that Decision. However, in accordance with Article 2(c) of that Decision, some measures should be adopted by use of the advisory procedure provided for in Article 3 of that Decision,

HAS ADOPTED THIS REGULATION:

Chapter I

GENERAL PROVISIONS

Article 1

Scope

1. This Regulation shall apply to equipment, systems and associated procedures for the establishment of the air traffic management network and its concept of operation in accordance with and within the scope of Regulation (EC) No XX/XXX [laying down the framework for the creation of the Single European Sky].
2. General conditions that are linked to the rights and obligations of air navigation service providers in the sense of Regulation (EC) No XXX/XX [on the provision of Air Navigation Services in the Single European Sky] shall be excluded from the scope of this Regulation.

Article 2

Objectives

The main objective of this Regulation is to define the conditions to be met in order to achieve interoperability within Community territory between the different systems and constituents of the air traffic management network, including their **safe and** seamless operation and development and upgrading to new technology, **without prejudice to the ultimate aim of achieving global interoperability**.

In the pursuit of the objective referred to in the first paragraph, this Regulation shall also contribute to the progressive creation of the internal market in equipment, systems and associated services.

³⁷ OJ L 254, 9.10.2000, p. 1.

³⁸ OJ L 184, 17.7.1999, p. 23

Article 3

Definitions

For the purposes of this Regulation the definitions set out in Article 2 of Regulation (EC) No XX/XXX [laying down the framework for the creation of the Single European Sky] shall apply.

The following definitions shall also apply:

- (a) "air traffic management network" means a system comprising ground elements and airborne elements, enabling the provision of air navigation services, with the objective of allowing airspace users to meet their planned times of departure and arrival and adhere to their preferred flight profiles with minimum constraints, without compromising agreed levels of safety;
- (b) "systems" means that the air traffic management network consists of systems as described in Annex I, for which essential requirements must be laid down; each system is made up of a number of constituents and has interfaces with other systems; the concept of a "constituent" covers both tangible objects and intangible objects such as software or procedures;
- (c) "concept of operation" means the specification of the criteria for the operational use of air navigation equipment and systems; it provides information concerning the operational elements involved, the requirements of all those involved in their operational use, ground and airborne equipment functionality and the measures needed to ensure continued safe and efficient air traffic management;
- (d) "seamless operation" means the operation of the whole system in such a manner that from the user's perspective it functions as if it were a single system;
- (e) "essential requirements" means all the conditions set out in Annex II which must be met by the air traffic management network, its systems and their constituents;
- (f) "Community specification" means a European standard within the meaning of Article 1 of Directive 98/34/EC of the European Parliament and of the Council³⁹ or a Eurocontrol technical specification whose references have been published in the Official Journal of the European Communities;
- (g) "implementation rules" means the rules by which a system or part of a system is covered in order to meet the essential requirements and ensure the seamless operation of the air traffic management network, including its interoperability;
- (h) "national supervisory authority" means the body or bodies, appointed by a Member State for the supervision of air navigation service providers;
- (i) "upgrading" means any major modification work on a system or part of a system which requires the drawing up of a declaration of verification;

³⁹ OJ L 204, 21.7.1998, p. 37

- (j) "renewal" means any major substitution work on a system or part of a system which requires the drawing up of a declaration of verification

Chapter II

ESSENTIAL REQUIREMENTS, COMMUNITY SPECIFICATIONS AND IMPLEMENTATION RULES

Article 4

Essential requirements

The European Air Traffic Management network, its systems and their constituents shall meet the essential requirements described in Annex II.

Article 5

Community specifications

1. Compliance with the essential requirements referred to in Annex II shall be presumed in relation to systems or constituents that meet the relevant Community specifications or parts thereof whose reference numbers have been published in the *Official Journal of the European Communities*.
2. Where a Member State or the Commission considers that conformity with a Community specification does not ensure compliance with the essential requirements referred to in Annex II which the said Community specification is intended to cover, the procedure referred to in Article 16(3) shall apply.
3. In the case of shortcomings of European standards with respect to essential requirements, partial or total withdrawal of the standards concerned from the publications containing them, or their amendments, may be decided upon in accordance with the procedure laid down in Article 5 of Directive 98/34/EC.
4. In the case of shortcomings of technical specifications drawn up by Eurocontrol with respect to essential requirements, partial or total withdrawal of the specifications concerned from the publications containing them, or their amendments, may be decided upon in accordance with the procedure referred to in Article 16(3).

Article 6

Implementation rules

1. Implementation rules shall be drawn up:
 - (a) for systems which are essential to achieve the objectives of this Regulation;
 - (b) to support the coordinated and rapid introduction of new concepts of operations or technology in air traffic management.
2. Where necessary, especially for treating categories of systems or to solve certain problems as a matter of priority or to reflect the evolutionary introduction of new technology, a system, or part of a system, may be covered by more than one implementation rule. Inversely, achievement of particular operational performances

in parts of the network might imply the drawing up of rules that impose requirements on more than one system.

3. Systems, or parts thereof, shall comply with the relevant implementation rules; this compliance shall be permanently maintained while each system is in use.
4. To the extent necessary to achieve the objectives defined in Article 2, each implementation rule, shall:
 - (a) determine any specific requirements for seamless operations, including interoperability, safety or performance that are essential to achieve the objectives of this Regulation;
 - (b) state in each case under consideration which of the modules defined in Decision 93/465/EEC or where appropriate which specific procedures are to be used in order to assess either the conformity or the suitability for use of the constituents essential for seamless operation, safety or performances as well as the verification of systems.
5. Where a Member State or the Commission considers that conformity with an implementation rule does not ensure compliance with the essential requirements referred to in Annex II which the said implementation rule is intended to cover, the procedure referred to in Article 16(2) shall apply.
6. In the case of shortcomings of implementation rules with respect to essential requirements, partial or total withdrawal of the rules concerned from the publications containing them, or their amendments, may be decided upon in accordance with the procedure referred to in Article 16(2).

Chapter III

PROCEDURES

Article 7

Community specifications

1. Community specifications shall consist of European standards drawn up by the European standardisation bodies in cooperation with Eurocae under a mandate from the Commission in accordance with the provisions of Article 6(4) of Directive 98/34/EC.

In certain specialised fields, in particular on matters of internal coordination between air navigation service providers, such as procedures, the Commission may request Eurocontrol to draw up technical specifications within a list to be established in accordance with the procedure referred to in Article 16(3).
2. The Commission shall publish the references to the European standards referred to in paragraph 1 in the *Official Journal of European Communities*.
3. The references to the Eurocontrol technical specifications, referred to in paragraph 1 shall be published in the *Official Journal of European Communities*, in accordance with the procedure referred to in Article 16(3).

Article 8

Implementation rules

1. When preparing for implementation rules referred to in Article 6, the Commission may request, where appropriate, Eurocontrol to draw up draft measures on the basis of a work programme laid down by the Commission. Implementation rules shall be adopted and reviewed by the procedure set out in Article 16(2). They shall be published in the Official Journal of the European Communities.
2. The preparation, adoption and review of implementation rules shall take into account the estimated cost of technical solutions by which they may be met, with a view to defining the most viable solution, **with due regard to the maintenance of a high level of safety**. To this end, an assessment of the costs and benefits of those solutions for all stakeholders concerned as well as for the European Air Traffic Management network shall be attached to each draft implementation rule.
3. When each implementation rule is adopted, the date of entry into force shall be laid down in accordance with the procedure referred to in Article 16(2). Where simultaneous actions of the different stakeholders are required to achieve the objectives of this Regulation, the date of entry into force ~~can~~ **shall, where appropriate,** be also a target date by which all stakeholders have to equip themselves with systems compliant to the relevant implementation rule.

Chapter IV

VERIFICATION OF COMPLIANCE

Article 9

EC declaration of conformity or suitability to use of constituents

1. Compliance with the essential requirements of this Regulation shall be presumed in relation to those constituents that bear the EC declaration of conformity or suitability for use the components of which are set out in Annex III.
2. In order to draw up the EC declaration of conformity or suitability of use, the manufacturer, or its authorised representative established in the Community, must apply the provisions laid down in the relevant implementation rules. Where so required by the implementation rule, the assessment of the constituent shall be appraised by the notified body referred to in Article 12, with which the manufacturer or his authorised representative has lodged the application.
3. Where constituents are the subject of other Community provisions covering other aspects, the EC declaration of conformity or suitability for use shall state that the constituent also meets the requirements of those other provisions.

Article 10

EC declaration of verification of systems

1. The putting into service, renewal and upgrading of those systems constituting the Community air traffic management network shall be subject to verification with a view to ensuring that these systems are designed, developed, installed and operated in such a way as to meet the essential requirements concerning them when integrated into the European Air Traffic Management network.
2. Prior to the putting into service, the air navigation service provider shall send to the national supervisory authority concerned, an EC declaration of verification confirming compliance to the essential requirements, accompanied by a technical file, the components of which are set out in Annex IV. This technical file will include results of verification by a notified body referred to in Article 12, when so required by the applicable implementation rule(s).
3. In the event of upgrading involving airborne components the airspace users shall declare conformity with the provisions of this Regulation at the same time they request a safety approval by the national supervisory authority.

Article 11

Safeguard clause

1. Where the national supervisory authority finds that a constituent bearing the EC declaration of conformity or suitability of use or a system accompanied by the EC declaration of verification is likely, when used as intended, not to meet the essential requirements it shall take all necessary measures to restrict its area of application, prohibit its use or withdraw it from the market.

The national supervisory authority shall immediately inform the Commission of any such measures, indicating its reasons and in particular, whether non-compliance is due to:

- (a) failure to meet the essential requirements referred to in Annex II;
 - (b) incorrect application of the implementation rules or Community specifications;
 - (c) shortcomings in the implementation rules or Community specifications.
2. The Commission shall enter into consultation with the parties concerned ~~as soon as possible~~ **forthwith**. Where following the consultation, the Commission establishes that the measure is justified, it shall forthwith so inform the Member State that has taken the initiative and the other Member States. Where the decision referred to in paragraph 1 is justified by shortcomings in the implementation rules or Community specifications, the procedure referred to in Articles 5 and 6 shall apply. Where following ~~the~~ **this** consultation the Commission establishes that the measure is unjustified, it shall forthwith so inform the Member State that has taken the initiative and the manufacturer or its authorised representative established within the Community.

3. Where a constituent bearing the EC declaration of conformity or suitability for use or a system accompanied by the EC declaration of verification, fails to comply, the Member State shall take appropriate action against whomsoever has drawn the EC declaration of conformity or suitability for use or the EC declaration of verification.

Article 12

Notified bodies

1. Member States shall notify to the Commission and the other Member States the bodies responsible for carrying out the procedure for the assessment of conformity or suitability for use referred to in Article 9 and the verification procedure referred to in Article 10, indicating each body's area of responsibility, and the identification numbers obtained in advance from the Commission.

The Commission shall publish in the Official Journal of the European Communities 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. A Member State shall withdraw approval from a body which no longer meets the criteria referred to 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 notify as notified body(ies) the organisation(s) recognised in conformity with Article 4 of Regulation (EC) XX/XXX [on the provision of Air Navigation Services in the Single European Sky].

Chapter V

FINAL PROVISIONS

Article 13

Revision of annexes

In order to make adaptations to technical developments, in particular progress in the definition of the concept of operations referred to in Article 14, adjustments may be made to Annexes I and II in accordance with the procedure referred to in Article 16(2).

Article 14

*Introduction of new technology and industry consultation process **for consulting interested parties***

1. The Commission shall work on the concept of operations to be implemented under this Regulation with a view to achieving safe and efficient airspace use for all phases of flight.
2. To support the timely introduction of the **future** concept of operation referred to in paragraph 1, the Commission shall consult stakeholders, including air navigation service providers, **professional associations**, airspace users, **users of air navigation systems** and manufacturing industry with the objective of establishing a widely supported strategic management programme for the introduction of new concepts and technologies in the Community air traffic management network.
3. In the accomplishment of its tasks, the Commission may take the advice of industry through the process referred to in paragraph 2 so as to ensure the feasibility, proportionality and cost-effectiveness of implementation rules and Community specifications proposed for adoption under this Regulation.

Article 15

Transitional arrangements

1. Starting from 1 January 2003 the essential requirements of Annex II shall apply to the putting into service, renewal and upgrading of systems and constituents of the air traffic management network.
2. Compliance with the essential requirements of Annex II shall be required for all systems and constituents in operation by 1 January 2009.

Article 16

Committee Procedures

1. The Commission shall be assisted by the “Single Sky Committee” as provided for in Article 7 of Regulation (EC) No XXX/XX [laying down the framework for the creation of the Single European Sky].
2. Where reference is made to this paragraph, the regulatory procedure laid down in Article 5 of Decision 1999/468/EC shall apply, in compliance with Article 7 and Article 8 thereof.

The period provided for in Article 5(6) of Decision 1999/468/EC shall be one month.

3. Where reference is made to this paragraph, the advisory procedure laid down in Article 3 of Decision 1999/468/EC shall apply, in compliance with Article 7 and Article 8 thereof.

Article 17

Repeal

Directives 93/65/EEC and 97/15/EC are hereby repealed.

References to the repealed Directives shall be construed as references to this Regulation.

Article 18

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 Communities*.

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

Done at Brussels,

For the European Parliament
The President

For the Council
The President

ANNEX I

LIST OF AIR NAVIGATION SYSTEMS

For the purpose of this Regulation the air traffic management network is subdivided in seven systems.

When so required, the system is meant to include not only the ground part but also the airborne equipment and procedures related to air traffic management operations and the airport equipment and procedures related to air traffic management operations.

1. Equipment and procedures used for flow management.
2. Equipment and procedures used for airspace management.
3. Equipment and procedures for air traffic control, in particular for flight data processing systems, surveillance data processing systems and human-machine interface.
4. Communications equipment and procedures for ground-to-ground, air-to-ground and air-to-air communications.
5. Navigation equipment and procedures.
6. Surveillance equipment and procedures.
7. Equipment and procedures for aeronautical information and meteorological information.

ANNEX II

ESSENTIAL REQUIREMENTS

Part A: General requirements

1. Seamless operation

Air traffic management systems and their constituents shall be designed, built, maintained and operated in such a way so as to ensure the seamless operation of the air traffic management network throughout the Community at all times and for all phases of flight. Seamless operation can be expressed, in particular, in terms of information exchange, common understanding of information, comparable processing performances and the associated procedures enabling common operational performances agreed for the whole or parts of the air traffic management network.

2. Support to new concepts of operation

The air traffic management network, its systems and their constituents shall support, on a coordinated basis, new agreed concepts of operation that improve the quality of air navigation services, in particular in terms of safety and capacity, taking due account of technology development and of their safe introduction.

3. Safety

Evolution of systems and operations of the air traffic management network shall achieve agreed high levels of safety. Agreed safety management methodologies shall be established to achieve this. A harmonised set of safety requirements for the systems and their constituents shall be defined with a view to achieving the agreed safety levels.

4. Integrated civil/military operation

The air traffic management network, its systems and their constituents shall support integrated civil/military operations, to the extent necessary for the efficient use of airspace

5. Environmental constraints

The evolution of systems and operations of the air traffic management network shall minimise environmental impact in **compliance to safety requirements and in** accordance with applicable Community legislation.

6. System construction principles

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

Part B: Specific requirements

1. Equipment and procedures used for airspace management

1.2. Seamless operation

Information relating to pre-tactical and tactical aspects of airspace availability shall be provided to whomever concerned 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.

1.3. Safety

The design, implementation, maintenance and operation of equipment and procedures for airspace management shall be compliant with the safety requirements in force for the relevant parts of the network (or the relevant volumes of airspace).

1.4. Integrated civil/military operation

Equipment and procedures used for airspace management shall support and facilitate the gradual implementation of integrated civil/military operations, in particular the Flexible Use of Airspace.

2. Equipment and procedures used for flow management

2.1 Seamless operation

Equipment and procedures shall support the bi-directional exchange of correct, coherent and relevant strategic and pre-tactical flight information and offer dialogue capabilities in view of an optimised use of airspace.

Provision of accurate and relevant tactical flight information covering all phases of flight shall be ensured to further optimise the use of airspace.

2.2. Safety

In order to ensure that the network load remains within the boundaries dictated by separation and safety standards, equipment and procedures shall match demand for airspace use with available airspace capacity while providing an optimised use of airspace.

2.3. Integrated civil/military operation

Equipment and procedures shall support and facilitate the gradual implementation of integrated civil/military operation, in particular the Flexible Use of Airspace.

3. Equipment and procedures for air traffic control

3.1. General requirements

3.1.1. System construction principles

Systems shall be designed, built and maintained on the grounds of sound engineering principles, in particular those relating to modularity supporting inter-changeability of constituents.

3.1.2. Safety

Systems shall be designed, built, maintained and operated in such a way as to maintain high levels of safety both under nominal and degraded modes of operation, in particular when implementing increased levels of automation.

Systems shall be designed, built, maintained and operated in such a way as to provide, in the event of failure, a gradual and graceful transition between nominal levels of automation and the degraded mode operation.

3.2. Flight data processing systems

3.2.1. Seamless operation

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

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

3.2.2. Support to new concepts of operation

Flight data processing systems shall accommodate the gradual implementation of advanced concepts of operation for all phases of flight, in particular those relating to Collaborative Decision Making, increased automation and the delegation of separation responsibility to the airborne side.

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

Airborne and ground systems and their constituents supporting Collaborative Decision Making and the delegation of separation responsibility to the airborne side shall be designed, built, maintained and operated in such a way as to be interoperable in terms of the timely exchange of correct and consistent information and share a common understanding of the current and future operational situation.

3.2.3. Safety

Flight data processing systems' design, building, maintenance and operation shall achieve high levels of safety, both in nominal and degraded modes, with a view to decreasing the number of air traffic management induced accidents or risk bearing incidents, for all phases of flight and for the entire European Air Traffic Management network.

Safety nets shall be subject to agreed common performance characteristics as derived from the agreed safety levels for the whole or parts of the network

3.2.4. Integrated civil/military operation

Flight data processing systems' design, building, maintenance and operation shall support the timely exchange of correct and consistent information between civil and military counterparts, covering all phases of flight and for the entire European Air Traffic Management network and, as much as possible, a similar working environment.

3.3. Surveillance data processing systems

3.3.1. Seamless operation

Surveillance data processing systems shall be designed, built, maintained and operated in such a way so as to provide the required quality of service within a given environment (surface, terminal manoeuvring area, 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 controller position.

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

3.3.2. Support to new concepts of operation

Surveillance data processing systems shall accommodate the gradual availability of new sources of surveillance information in such a way as to ensure the overall quality of service.

3.4. Human-machine interface

3.4.1. Seamless operation

Human-machine interfaces of ground air traffic management systems shall be designed, built, maintained and operated in such a way as to offer a similar working environment to all controllers.

3.4.2. Safety

Human-machine interfaces shall be designed, built, maintained and operated in such a way so that the tasks given to the controller are consistent with human capabilities in both normal and degraded modes of operation in a way compatible with required safety levels.

4. Communications equipment 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 in such a way so 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 throughout the Community shall be such as to meet the requirements of quality of service, coverage and redundancy.

4.2. Support to new concepts of operation

Communication systems shall support the agreed implementation of advanced concepts of operation for all phases of flight, in particular those relating to Collaborative Decision Making and delegation of separation responsibility to the airborne side.

4.3. Environmental constraints

The siting and the operation of ground-based communication systems shall take into account environmental constraints.

Ground-based communication systems shall be designed, built, installed, maintained and operated in such a way as to be electromagnetically immune and not interfere with the installations, equipment and public or private networks in their normal environment.

5. Navigation equipment and procedures

5.1. Seamless operation

Navigation systems shall be designed, built, maintained and operated in such a way so as to achieve the required horizontal and vertical navigation accuracy for a given environment (surface, terminal manoeuvring area, en-route), with known traffic characteristics and exploited under a certain operational concept.

5.2. Safety

The design, building, maintenance and operation of navigation systems shall be such as to guarantee safety at the level set for the network or parts thereof, including that for specific degraded modes.

5.3. Environmental constraints

The siting and the operation of ground-based navigation systems shall take into account environmental constraints as well as compliance with requirements of electromagnetic compatibility.

Ground-based navigation systems shall be designed, built, installed, maintained and operated in such a way as to be electromagnetically immune and not interfere with the installations, equipment and public or private networks in their normal environment.

6. Surveillance equipment and procedures

6.1. Seamless operation

Surveillance systems shall be designed, built, maintained and operated in such a way so as to achieve the required separation minima applicable in a given environment (surface, terminal manoeuvring area, en-route) with known traffic characteristics and exploited under a certain operational concept, in particular in terms of accuracy at the control position, coverage, range and quality of service.

The surveillance network throughout the Community shall be such as to meet the requirements of accuracy, coverage and redundancy, including availability of information, to ensure optimised operations through different parts of the network.

6.2. Environmental constraints

The siting and the operation of ground-based surveillance systems shall take into account environmental constraints.

Ground-based surveillance systems shall be designed, built, installed, maintained and operated in such a way as to be electromagnetically immune and not interfere with the installations, equipment and public or private networks in their normal environment.

7. Equipment and procedures for aeronautical and meteorological information

7.1. Seamless operation

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

Accurate, complete and up-to-date meteorological information shall be made available in a timely manner, based on a commonly agreed data set.

7.2. Support to 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 the continuous improvement of the efficiency of airspace use.

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

7.3. Safety

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

ANNEX III

CONSTITUENTS

EC declaration

- **of conformity**
- **of suitability for use**

1. Constituents

The EC declaration applies to the constituents that are essential to achieve the objectives of this Regulation. These constituents will be identified in the implementation rules in accordance with the provisions of Article 6 of this Regulation.

2. Scope

The EC declaration covers:

- either the assessment by a notified body or bodies of the intrinsic conformity of a constituent, considered in isolation to the Community specifications to be met; or
- the assessment/judgement by a notified body or bodies 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 referred to in the implementation rules.

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 and where appropriate the references of other Community provisions applied;
- the name and address of the manufacturer or his 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, suitability for use (Article 9 of this Regulation);
- all of the relevant descriptions 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 within the Community.

ANNEX IV

SYSTEMS

EC declaration of verification of systems

Verification procedure for systems

1 Contents of 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 and where appropriate the references of other Community provisions applied;
- name and address of the contracting entity or its authorised representative established within the Community (trade name and full address, and in case of the authorised representative also the trade name of the contracting entity);
- a brief description of the system;
- description of the procedure followed in order to declare conformity of the system (Article 10 of this Regulation);
- name and address of the notified body which conducted 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, or a notified body where so required by the applicable implementation rule, checks and certifies that a system:

- complies with this Regulation;
- complies with other applicable Community provisions;

and may be put into operation.

The system is checked at each of the following stages:

- overall design;
- development and integration of the system, including in particular constituent assembly and overall adjustments;
- operational system integration.

Where a notified body is involved, it draws up a certificate of conformity intended for the contracting entity or its authorised representative established within the Community. The contracting entity then draws up the 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 implementation rules, and, where appropriate, the Community specifications;
- list of constituents essential for seamless operations, safety or performance, as referred to in Article 6 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 9 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), 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 in view of ensuring compliance with essential requirements and any particular requirements contained in the relevant implementation rules.

4 Submission

The technical file must be attached to the declaration of verification which the contracting entity sends to the national supervisory authority.

A copy of the technical file must be kept by the contracting entity 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 judgement 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, nor on the results of such inspections.
6. The body must take out liability insurance unless its liability is assumed by the 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 gained in carrying out their tasks under this Regulation.