Commission Implementing Regulation (EU) 2019/123 of 24 January 2019 laying down detailed rules for the implementation of air traffic management (ATM) network functions and repealing Commission Regulation (EU) No 677/2011 (Text with EEA relevance)

COMMISSION IMPLEMENTING REGULATION (EU) 2019/123

of 24 January 2019

laying down detailed rules for the implementation of air traffic management (ATM) network functions and repealing Commission Regulation (EU) No 677/2011

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EC) No 551/2004 of the European Parliament and of the Council of 10 March 2004 on the organisation and use of the airspace in the single European sky (the airspace Regulation)[(1)], and in particular Articles 6(4) and 6(7) thereof,

Whereas:

(1) The network functions should be a service of general interest exercised for/within the context of the European air traffic management network (EATMN, hereafter referred to as 'the network'). They should contribute to the sustainable development of the air transport system by ensuring the required level of performance, interoperability, compatibility and coordination of activities including those to ensure the optimal use of scarce resources.

(2) The design of the European route network, the management of the network capacity and air traffic flows and the coordination of scarce resources, as provided for in Regulation (EC) No 551/2004, should be without prejudice to Member States' sovereignty over their airspace and to their responsibilities relating to public order, public security and defence matters as provided for in Regulation (EC) No 549/2004 of the European Parliament and of the Council[(2)].

(3) The network should include all physical and operational components that determine the performance of aircraft, in particular their punctuality and flight efficiency, operated in the airspace within the International Civil Aviation Organisation (ICAO) EUR region where Member States are responsible for the provision of air traffic services.

(4) The European route network should be designed to improve the efficiency of the routings from a gate-to-gate perspective in all phases of flight taking particular account of flight efficiency and environmental aspects.

(5) Operational actions to develop efficient airspace structures and manage the available capacity are required to ensure the continuous improvement of the network operations in the single European sky and contribute to the Europe-wide performance targets. Those

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operational actions should allow for efficient use of airspace and ensure that airspace users can operate preferred trajectories.

(6) The Air Traffic Flow Management (ATFM) function is an integral part of the network functions with a view to optimising available capacity in the use of airspace. Therefore, this function should be further detailed, taking due account of Commission Regulation (EU) No 255/2010[(3)].

(7) Regulation (EC) No 551/2004 provides for the adoption of detailed implementing rules to coordinate and harmonise the processes and procedures to enhance the efficiency of aeronautical frequency management. The detailed implementing rules would also need to provide for a central function to coordinate the early identification and resolution of frequency needs to support the design and operation of the network.

(8) The ICAO's work in route design, air traffic flow management, frequency and radar transponder codes management should be used as a basis when optimising the development and operation of the network.

(9) The Member States should comply with their obligations towards ICAO on route design, air traffic flow management, frequency and radar transponder codes management and should implement them more effectively for the network. The Network Manager should provide coordination and support in that area.

(10) The implementation of the Air Traffic Flow Management (ATFM) function should be without prejudice to Council Regulation (EEC) No 95/93[(4)]. Airports that are entry and exit points to the network are key contributors to the overall network performance. For that reason, that function should liaise with airport operators acting as ground coordinators to optimise capacity on the ground. This would improve the overall network capacity. Furthermore, procedures to increase consistency between airport slots and flight plans should be established to optimise the available capacity of the network, including airports.

(11) The allocation of radio spectrum takes place in the context of the International Telecommunication Union (ITU). The Member States have a responsibility to communicate their civil aviation requirements to the ITU and to subsequently use the frequency band allocated to general air traffic in an optimal manner. Decision No 676/2002/EC of the European Parliament and of the Council[(5)] sets out a policy and legal framework for that area.

(12) ICAO has developed guidance material relevant for the radar transponder codes, including the Mode S interrogator codes, as well as the radio frequency functions. It also operates a system of registering frequency assignments for general air traffic purposes in the ICAO European region. This is currently facilitated by Eurocontrol, acting as Network Manager.

(13) The events linked to the shooting down of flight MH 17 in the airspace of Ukraine on 17 July 2014 and the terrorist attack at Brussels airport on 22 March 2016 have demonstrated the need of having a central entity that can contribute to the coordination of mitigating measures at local, regional and network level to secure a timely response to future crisis situations affecting aviation.

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(14) A Network Manager should act as an impartial and competent body to perform the tasks necessary to execute the network functions provided for in Regulation (EC) No 551/2004 in an effective manner and with appropriate resources. The applicant for Network Manager should give evidence on the means and resources it plans to ensure in order to meet the requirements imposed on that body. The Network Manager should be represented by a manager from the body appointed to act as Network Manager.

(15) It is beneficial to have a single body to coordinate the various network functions in support of action taken at local and sub-regional level to develop and facilitate consistent short- and long-term network operational and strategic objectives in line with the performance objectives. However, network functions should be delivered by the operational stakeholders and the Network Manager and at Member State and functional airspace block level in accordance with the responsibilities set out in this Regulation.

(16) In 2017, the Commission reviewed the governance, financial arrangements, cost base and cost-efficiency of the network functions. One of the outcomes of this review was that the Network Manager should benefit from strengthened governance and greater management autonomy.

(17) The network functions should be provided in a cost-efficient manner, in particular avoiding any duplication of efforts.

(18) The duties and tasks of the Network Manager should be clearly set out with regard to the implementation of the network functions and the performance of the network. This should include any service or activity that needs to be performed centrally for the benefit of the operational stakeholders in accordance with working arrangements and processes for operations agreed with those stakeholders.

(19) The tasks entrusted to the Network Manager relating to the monitoring of the infrastructure and common network support services should be carried out taking full account of the opinions of Member States and operational stakeholders.

(20) The Network Manager should be involved in preparation of plans and operational actions relating to the execution of the network functions at national and sub-regional level when those plans and actions have an impact on the performance of the network.

(21) To ensure an adequate performance of the network, the Network Operations Plan should include operational actions and local reference values that take into account the evolving network conditions and aim at meeting Union wide performance targets. Furthermore, the Network Manager should identify operational constraints and bottlenecks and suggest appropriate action.

(22) Application of sound management principles is essential for continuous improvement of air traffic flow management in the Union, anticipating air traffic growth, and making best use of available capacity while reducing the environmental impact of air traffic flows. It is therefore necessary to establish a common framework for planning and implementing improvements to the performance of the network. To that end, a strategy plan and an operations plan should be drawn up at network level.

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(23) The Network Manager and operational stakeholders should work in partnership in order to improve air traffic flow management and take remedial measures as appropriate. The Network Manager should in particular be able to introduce ATFM measures to make best use of available capacity and promote the best provision of that capacity by ATC sectors.

(24) The network functions should be without prejudice to Article 13 of Regulation (EC) No 549/2004 intended to safeguard essential security or defence policy interests. The network functions should also be without prejudice to the application of the flexible use of airspace as provided for in Article 7 of Regulation (EC) No 551/2004.

(25) There should be coordination between the network functions and the operations organised at the level of functional airspace blocks.

(26) Military operation effectiveness, civil-military cooperation and coordination are of utmost importance to achieving the required objectives. This Regulation should not cover decisions on the content, scope or performance of military operations and training under the operational air traffic regime. However, it is important to cover the interfaces between these operations and those covered by this Regulation in the interest of safety and mutual efficiency.

(27) It is necessary to ensure the timely and effective execution of network functions and support the Network Manager in performing its tasks by establishing an efficient framework for consultation of operational stakeholders and detailed working arrangements and processes for operations.

(28) Effective stakeholder consultations should take place at national, functional airspace block and network levels.

(29) To ensure the appropriate governance relating to the execution of the network functions, a Network Management Board should be set up.

(30) To ensure effective decision-making, the Network Management Board should have a limited number of members with operational and managerial responsibilities and extensive knowledge and expertise in the ATM field. Those members should ensure a balanced representation of the interests of all stakeholders. Air navigation service providers of associated countries contributing to the work of the Network Manager, through their representatives, should also be allowed to participate in the Network Management Board.

(31) The Network Management Board should be supported in its decision-making by a working group on operations composed of operational managers to provide it with the appropriate operational insight and advice.

(32) To ensure crisis management effectiveness at network level and support the European Aviation Crisis Coordination Cell in its tasks, a network of State focal points should be set up. The focal points should facilitate the involvement of national authorities and ensure close cooperation with the corresponding structures at Member State level in the event of crises.

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(33) Considering Member States' sovereignty over their airspace and their requirements relating to public order, public security and defence matters as well as their responsibilities as regards the network functions, Member States should be informed of and consulted on all measures having significant impact on the performance of the network. The Commission should make the best use of existing Committee meetings in order to take into account their views.

(34) The budget of the Network Manager should allow the Network Manager to meet the specific targets identified in the performance scheme and to implement its work programme. The budget should be separately identifiable from the rest of the budget of the body appointed to act as the Network Manager where that body carries out any other activity. The Network Management Board should confirm the consistency of the Network Manager's budget with the Network Manager's annual work programme.

(35) The Commission should ensure appropriate supervision of the Network Manager. That supervision should take into account the role of the European Union Aviation Safety Agency as competent authority for the certification and oversight of the Network Manager.

(36) Third countries that have an agreement with the Union should be involved in the establishment and implementation of the network functions in order to enhance the pan-European dimension of the single European sky.

(37) This Regulation takes due account of the experience gained from the execution of the network functions since 2011 and sets revised common rules for the execution of network functions. Commission Regulation (EC) No 677/2011[(6)] should therefore be repealed.

(38) The measures provided for in this Regulation are in accordance with the opinion of the Single Sky Committee,

HAS ADOPTED THIS REGULATION:

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject matter and scope

1 This Regulation lays down detailed rules for the implementation of air traffic management network functions (network functions) in accordance with Article 6 of Regulation (EC) No 551/2004. It also lays down rules for managing network crises.

2 The network functions subject to this Regulation shall be the following:

a the European Route Network Design (ERND);

b the Air Traffic Flow Management (ATFM) as referred to in Article 6(7) of Regulation (EC) No 551/2004 and in Regulation (EU) No 255/2010;