Regulation (EC) No 1070/2009 of the European Parliament and of the Council of 21 October 2009 amending Regulations (EC) No 549/2004, (EC) No 550/2004, (EC) No 551/2004 and (EC) No 552/2004 in order to improve the performance and sustainability of the European aviation system (Text with EEA relevance)

REGULATION (EC) No 1070/2009 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 21 October 2009

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(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee[(1)],

Having regard to the opinion of the Committee of the Regions[(2)],

Acting in accordance with the procedure laid down in Article 251 of the Treaty[(3)],

Whereas:

(1) Implementation of the common transport policy requires an efficient air transport system allowing the safe, regular and sustainable operation of air transport services, optimising capacity and facilitating the free movement of goods, persons and services.

(2) The adoption by the European Parliament and the Council of the first package of the single European sky legislation, namely, Regulation (EC) No 549/2004 of 10 March 2004 laying down the framework for the creation of the single European sky (the framework Regulation)[(4)], Regulation (EC) No 550/2004 of 10 March 2004 on the provision of air navigation services in the single European sky (the service provision Regulation)[(5)], Regulation (EC) No 551/2004 of 10 March 2004 on the organisation and use of the airspace in the single European sky (the airspace Regulation)[(6)], and Regulation (EC) No 552/2004 of 10 March 2004 on the interoperability of the European air traffic management network (the interoperability Regulation)[(7)] laid down a firm legal basis for a seamless, interoperable and safe air traffic management (ATM) system.

(3) In response to strong demand from industry, Member States and other stakeholders to simplify and increase the effectiveness of the regulatory framework for aviation in Europe, a high level group on the future of the European aviation regulatory framework (the High Level Group) was established in November 2006. The High Level Group,

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made up of representatives of the majority of stakeholders, submitted a report in July 2007 containing recommendations on how to improve the performance and governance of the European aviation system. The High Level Group recommended according the environment the same importance as safety and efficiency in the aviation system and insisted that industry and regulators should work together to ensure that ATM contributes as much as possible to sustainability.

(4) At its meeting of 7 April 2008 the Council invited the Commission to develop, in accordance with the recommendations of the High Level Group, an overall system approach in line with the gate-to-gate concept to enhance safety, improve ATM and to increase cost efficiency.

(5) In order to complete the creation of the single European sky, it is necessary to adopt additional measures at Community level, in particular, to improve the performance of the European aviation system in key areas such as the environment, capacity and cost-efficiency, all having regard to the overriding safety objectives. It is also necessary to adapt the single European sky legislation to technical progress.

(6) Council Regulation (EC) No 219/2007 of 27 February 2007 on the establishment of a Joint Undertaking to develop the new generation European air traffic management system (SESAR)[8] calls for the development and implementation of an ATM Master Plan. The implementation of the ATM Master Plan requires regulatory measures to support the development, introduction and financing of new concepts and technologies. It should result in a system composed of fully harmonised and interoperable components, which guarantee high performance air transport activities in Europe. The schedule for implementation of the single European sky should take into consideration the timescale foreseen for the development and deployment phases of the SESAR programme as a part of the single European sky. Both processes should be closely coordinated.

(7) The concept of common projects, aimed at assisting airspace users and/or air navigation service providers to improve collective air navigation infrastructure, the provision of air navigation services and the use of airspace, in particular those that may be required for the implementation of the ATM Master Plan, should not prejudice pre-existing projects decided by one or several Member States with similar objectives. The provisions on financing of the deployment of common projects should not prejudge the manner in which these common projects are set up. The Commission may propose that funding, such as Trans-European Network or European Investment Bank funding, may be used in support of common projects, in particular to speed up the deployment of the SESAR programme, within the multiannual financial framework. Without prejudice to access to that funding, Member States should be free to decide how revenues generated by the auctioning of aviation sector allowances under the Emissions Trading Scheme are to be used and to consider in this context whether a share of such revenues might be used to finance common projects at the level of functional airspace blocks.

(8) In particular where common projects are deployed, care should be taken, inter alia, through the application of comprehensive and transparent accounting, to ensure that

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airspace users are not double-charged. Common projects should be deployed to the benefit of all stakeholders and should ensure equal treatment thereof.

(9) To ensure the consistent and sound oversight of service provision across Europe, the national supervisory authorities should be guaranteed sufficient independence and resources. This independence should not prevent those authorities from exercising their tasks within an administrative framework.

(10) National supervisory authorities have a key role to play in the implementation of the single European sky and the Commission should therefore facilitate cooperation among them in order to enable the exchange of best practices and to develop a common approach, including through enhanced cooperation at regional level. This cooperation should take place on a regular basis.

(11) The social partners should be better informed and consulted on all measures having significant social implications. At Community level, the Sectoral Dialogue Committee set up under Commission Decision 98/500/EC[(9)] should also be consulted.

(12) To drive improved performance of ATM and air navigation services (ANS), it is necessary to establish a framework for the definition, implementation and enforcement of binding performance targets in key performance areas in line with the policies of the International Civil Aviation Organisation (ICAO). An indispensable feature of such a framework should be an appropriate mechanism for reporting, examining, evaluating and disseminating performance data of ATM and ANS along with a relevant incentive scheme to encourage achievement of the targets.

(13) National supervisory authorities should have the flexibility to reflect specific national or regional circumstances when formulating their national and regional plans. When approving or adopting national plans, Member States should be entitled to make appropriate modifications.

(14) When establishing charges for air navigation services the Commission and Member States should endeavour to use common forecasts. Some flexibility should be permitted in those cases where traffic diverges significantly from forecasts, in particular by using appropriate alert mechanisms.

(15) The costs determined by the Member States at national level or at the level of a functional airspace block which are intended to be shared among airspace users should take account of performance targets.

(16) For the cross-border provision of services, Member States should ensure that the designation of an air traffic service provider is not prohibited by any national legal system on the grounds that it is established in another Member State or is owned by nationals of that Member State.

(17) The national supervisory authorities should take appropriate measures to ensure a high level of safety including the possibility of issuing an individual certificate for each type of air navigation service, while respecting the need for cost-efficiency and consistency and avoiding duplication.

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(18) The functional airspace blocks are key enablers for enhancing cooperation between air navigation service providers in order to improve performance and create synergies. Member States should establish functional airspace blocks within a reasonable time-frame. For that purpose and in order to optimise the interface of functional airspace blocks in the single European sky, the Member States concerned should cooperate with each other and where appropriate they should also cooperate with third countries.

(19) When Member States establish a functional airspace block, other Member States, the Commission and other interested parties have an opportunity to submit their observations with the aim of facilitating an exchange of views. Those observations should be merely of an advisory nature for the Member State(s) concerned.

(20) In case of difficulties in the negotiation process with regard to the setting up of functional airspace blocks, the Commission may designate a Functional Airspace Blocks System Coordinator (the Coordinator). The tasks of the Coordinator should aim at providing assistance in overcoming such difficulties without interfering with the sovereignty of the Member State(s) concerned and, where appropriate, that of third countries taking part in the same functional airspace block. Costs incurred for the activities of the Coordinator should not have any impact on Member States' national budgets.

(21) The reports of the Eurocontrol Performance Review Commission and the final report of the High Level Group confirm that the route network and airspace structure cannot be developed in isolation, as each individual Member State is an integral element of the European Air Traffic Management Network (EATMN), both inside and outside the Community. A progressively more integrated operating airspace should therefore be established for general air traffic.

(22) In view of the creation of functional airspace blocks and the setting up of the performance scheme, the Commission should determine and take into account the necessary conditions for the Community to create a Single European Flight Information Region (SEFIR), to be requested by the Member States from the ICAO in accordance with both the established procedures of that organisation and the rights, obligations and responsibilities of Member States under the Convention on International Civil Aviation, signed in Chicago on 7 December 1944 (the Chicago Convention). By encompassing the airspace under the responsibility of the Member States, the SEFIR should facilitate common planning and integrated operations in order to overcome regional bottlenecks. Such a SEFIR should include the necessary flexibility to reflect specific needs such as traffic density and the level of complexity required.

(23) Airspace users face disparate conditions of access to, and freedom of movement within, Community airspace. This is due to the lack of harmonised Community rules of the air, and, in particular, the lack of a harmonised classification of airspace. The Commission should therefore harmonise such rules on the basis of ICAO standards.

(24) The EATMN should be designed and implemented with a view to achieving the safety, environmental sustainability, capacity enhancement and improved cost-efficiency of the whole air transport network. As highlighted in the Eurocontrol performance review

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Commission's report entitled 'Evaluation of functional airspace block initiatives and their contribution to performance improvement' of 31 October 2008, this could be best ensured through coordinated air transport network management at Community level.

(25) In line with the Statement by the Member States on military issues related to the single European sky accompanying Regulation (EC) No 549/2004, civil-military cooperation and coordination should play a fundamental role in the implementation of the single European sky, in order to move towards an enhanced flexible use of airspace for the achievement of the single European sky performance objectives, having due regard to military mission effectiveness.

(26) It is essential to achieve a common, harmonised airspace structure in terms of routes, to base the present and future organisation of airspace on common principles, to ensure the progressive implementation of the ATM Master Plan, to optimise the use of scarce resources to avoid unnecessary equipage costs, and to design and manage airspace in accordance with harmonised rules. To this end, the Commission should be responsible for adopting the necessary rules and implementing decisions with legally binding effect.

(27) The list of functions for network management and design should be amended to integrate, if necessary, future network functions defined by the ATM Master Plan. In doing so, the Commission should make the best possible use of the expertise of Eurocontrol.

(28) The High Level Group has recommended building new or enhanced functions upon existing foundations and enhancing the role of Eurocontrol, while positioning the Community as the single regulator and respecting the principle of separation of regulation from service provision. Accordingly, the Commission should entrust a reformed Eurocontrol, which has new governance arrangements in place, with the execution of tasks related to various functions, which do not involve the adoption of binding measures of a general scope or the exercise of political discretion. The execution of these tasks by Eurocontrol should be done in an impartial and cost-effective manner and with the full involvement of the airspace users and air navigation service providers.

(29) Adequate measures should be introduced to improve the effectiveness of air traffic flow management in order to assist existing operational units, including the Eurocontrol Central Flow Management Unit, to ensure efficient flight operations. Furthermore, the Commission communication on an action plan for airport capacity, efficiency and safety in Europe highlights the need to ensure operational consistency between flight plans and airport slots. In addition, the Community Observatory on Airport Capacity could help in providing Member States with objective information in order to align airport capacity with ATM capacity, without prejudice to their competences in this area.

(30) The provision of modern, complete, high-quality and timely aeronautical information has a significant impact on safety and on facilitating access to Community airspace and freedom of movement within it. Taking account of the ATM Master Plan, the Community should take the initiative to modernise this sector in cooperation with Eurocontrol and ensure that users are able to access those data through a single public point of access, providing a modern, user-friendly and validated integrated briefing.