Regulation (EC) No 551/2004 of the European Parliament and of the Council of 10 March 2004 on the organisation and use of the airspace in the single European sky (the airspace Regulation) (Text with EEA relevance)

REGULATION (EC) No 551/2004 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 10 March 2004

on the organisation and use of the airspace in the single European sky

(the airspace Regulation)

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission[(1)],

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

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

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

Whereas:

(1) The creation of the single European sky requires a harmonised approach for regulation of the organisation and the use of airspace.

(2) In the report of the High Level Group on the single European sky in November 2000 it is considered that airspace should be designed, regulated and strategically managed on a European basis.

(3) The Communication of the Commission on the creation of the single European sky of 30 November 2001 calls for structural reform to permit the creation of the single European sky by way of a progressively more integrated management of airspace and the development of new concepts and procedures of air traffic management.

(4) Regulation (EC) No 549/2004 of the European Parliament and of the Council of 10 March 2004 (the framework Regulation)[(5)] lays down the framework for the creation of the single European sky.

(5) In Article 1 of the 1944 Chicago Convention on Civil Aviation, the Contracting States recognise that ‘every State has complete and exclusive sovereignty over the airspace above its territory’. It is within the framework of such sovereignty that the Member

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States of the Community, subject to applicable international conventions, exercise the powers of a public authority when controlling air traffic.

(6) Airspace is a common resource for all categories of users that needs to be used flexibly by all of them, ensuring fairness and transparency whilst taking into account security and defence needs of Member States and their commitments within international organisations.

(7) Efficient airspace management is fundamental to increasing the capacity of the air traffic services system, to providing the optimum response to various user requirements and to achieving the most flexible use of airspace.

(8) The activities of Eurocontrol confirm that the route network and airspace structure cannot realistically be developed in isolation, as each individual Member State is an integral element of the European air traffic management network (EATMN), both inside and outside the Community.

(9) A progressively more integrated operating airspace should be established for en-route general air traffic in the upper airspace; the interface between upper and lower airspace should be identified accordingly.

(10) A European upper flight information region (EUIR) encompassing the upper airspace under the responsibility of the Member States within the scope of this Regulation should facilitate common planning and aeronautical information publication in order to overcome regional bottlenecks.

(11) Airspace users face disparate conditions of access to, and freedom of movement within, the Community airspace. This is due to the lack of harmonisation in the classification of airspace.

(12) The reconfiguration of airspace should be based on operational requirements regardless of existing boundaries. Common general principles for creating uniform functional airspace blocks should be developed in consultation with and on the basis of technical advice from Eurocontrol.

(13) It is essential to achieve a common, harmonised airspace structure in terms of routes and sectors, to base the present and future organisation of airspace on common principles, and to design and manage airspace in accordance with harmonised rules.

(14) The concept of the flexible use of airspace should be applied effectively; it is necessary to optimise the use of sectors of airspace, especially during peak periods for general air traffic and in high-traffic airspace, by cooperation between Member States in respect of the use of such sectors for military operations and training. To that end, it is necessary to allocate the appropriate resources for an effective implementation of the concept of the flexible use of airspace, taking into account both civil and military requirements.

(15) Member States should endeavour to cooperate with neighbouring Member States to apply the concept of flexible use of airspace across national borders.

(16) Differences in the organisation of civil-military cooperation in the Community restrict uniform and timely airspace management and the implementation of changes. The

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success of the single European sky is dependent upon effective cooperation between civil and military authorities, without prejudice to the prerogatives and responsibilities of the Member States in the field of defence.

(17) Military operations and training should be safeguarded whenever the application of common principles and criteria is detrimental to their safe and efficient performance.

(18) Adequate measures should be introduced to improve the effectiveness of air traffic flow management in order to assist existing operational units, including the Eurocontrol Central Flow Management Unit, to ensure efficient flight operations.

(19) It is desirable to reflect upon the extension of upper airspace concepts to the lower airspace, in accordance with a timetable and appropriate studies,

HAVE ADOPTED THIS REGULATION:

CHAPTER I

GENERAL

Article 1

Objective and scope

1 Within the scope of the framework Regulation, this Regulation concerns the organisation and the use of airspace in the Single European Sky. The objective of this Regulation is to support the concept of a progressively more integrated operating airspace within the context of the common transport policy and to establish common procedures for design, planning and management ensuring the efficient and safe performance of air traffic management.

2 The use of airspace shall support the operation of the air navigation services as a coherent and consistent whole in accordance with Regulation (EC) No 550/2004 of the European Parliament and of the Council of 10 March 2004 on the provision of air navigation services in the single European sky (the service provision Regulation)[(6)].

3 Without prejudice to Article 10, this Regulation shall apply to the airspace within the ICAO EUR and AFI regions where Member States are responsible for the provision of air traffic services in accordance with the service provision Regulation. Member States may also apply this Regulation to airspace under their responsibility within other ICAO regions, on condition that they inform the Commission and the other Member States thereof.

4 The Flight Information Regions comprised within the airspace to which this Regulation applies shall be published in the *Official Journal of the European Union*.

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CHAPTER II

AIRSPACE ARCHITECTURE

[F1] *Article 2*

[[F1]Division level]

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Textual Amendments

F1 Deleted by 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).

[F2 Article 3

European Upper Flight Information Region (EUIR)

1 The Community and its Member States shall aim at the establishment and recognition by the ICAO of a single EUIR. To that effect, for matters which fall within the competence of the Community, the Commission shall submit a recommendation to the Council in accordance with Article 300 of the Treaty at the latest by 4 December 2011.

2 The EUIR shall be designed to encompass the airspace falling under the responsibility of the Member States in accordance with Article 1(3) and may also include airspace of European third countries.

3 The establishment of the EUIR shall be without prejudice to the responsibility of Member States for the designation of air traffic service providers for the airspace under their responsibility in accordance with Article 8(1) of the service provision Regulation.

4 Member States shall retain their responsibilities towards the ICAO within the geographical limits of the upper flight information regions and flight information regions entrusted to them by the ICAO on the date of entry into force of this Regulation.**]**

Textual Amendments

F2 Substituted by 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).

[F3 Article 3a

Electronic aeronautical information

1 Without prejudice to the publication by Member States of aeronautical information and in a manner consistent with that publication, the Commission, working in cooperation with

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Eurocontrol, shall ensure the availability of electronic aeronautical information of high quality, presented in a harmonised way and serving the requirements of all relevant users in terms of data quality and timeliness.

2 For the purpose of paragraph 1, the Commission shall:

a ensure the development of a Community-wide aeronautical information infrastructure in the form of an electronic integrated briefing portal with unrestricted access to interested stakeholders. That infrastructure shall integrate access to and provision of required data elements such as, but not limited to aeronautical information, air traffic services reporting office (ARO) information, meteorological information and flow management information;

b support the modernisation and harmonisation of the provision of aeronautical information in its broadest sense in close cooperation with Eurocontrol and the ICAO.

3 The Commission shall adopt detailed implementing rules for this Article in accordance with the regulatory procedure referred to in Article 5(3) of the framework Regulation.**]**

Textual Amendments

F3 Inserted by 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).

[F2 Article 4

Rules of the air and airspace classification

The Commission shall, in accordance with the regulatory procedure referred to in Article 5(3) of the framework Regulation, adopt implementing rules in order to:

(a) adopt appropriate provisions on rules of the air based upon ICAO standards and recommended practices;

(b) harmonise the application of the ICAO airspace classification, with appropriate adaptation, in order to ensure the seamless provision of safe and efficient air traffic services within the single European sky.**]**

Textual Amendments

F2 Substituted by 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).

F1 Article 5

[F1 Reconfiguration of the upper airspace]

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