Regulation (EC) No 549/2004 of the European Parliament and of the Council of 10 March 2004 laying down the framework for the creation of the single European sky (the framework Regulation) (Text with EEA relevance)

REGULATION (EC) No 549/2004 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 10 March 2004

laying down the framework for the creation of the single European sky

(the framework Regulation)

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

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

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

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

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

Whereas:

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

(2) At its Extraordinary Meeting in Lisbon on 23 and 24 March 2000, the European Council called on the Commission to put forward proposals on airspace management, air traffic control and air traffic flow management, based on the work of the High Level Group on the single European sky set up by the Commission. This Group, made up largely of the civil and military air navigation authorities in the Member States, submitted its report in November 2000.

(3) Smooth operation of the air transport system requires a consistent, high level of safety in air navigation services allowing optimum use of Europe's airspace and a consistent, high level of safety in air travel, in keeping with the duty of general interest of air navigation services, including public service obligations. It should therefore be carried out to the highest standards of responsibility and competence.

(4) The single European sky initiative should be developed in line with the obligations stemming from the membership of the Community and its Member States of

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Eurocontrol, and in line with the principles laid down by the 1944 Chicago Convention on International Civil Aviation.

(5) Decisions relating to the content, scope or carrying out of military operations and training do not fall within the sphere of competence of the Community.

(6) The Member States have adopted a general statement on military issues related to the single European sky[(5)]. According to this statement, Member States should, in particular, enhance civil-military cooperation and, if and to the extent deemed necessary by all Member States concerned, facilitate cooperation between their armed forces in all matters of air traffic management.

(7) Airspace constitutes a limited resource, the optimum and efficient use of which will be possible only if the requirements of all users are taken into account and where relevant, represented in the whole development, decision-making process and implementation of the single European sky, including the Single Sky Committee.

(8) For all these reasons, and with a view to extending the single European sky to include a larger number of European States, the Community should, while taking into account the developments occurring within Eurocontrol, lay down common objectives and an action programme to mobilise the efforts by the Community, the Member States and the various economic stakeholders in order to create a more integrated operating airspace: the single European sky.

(9) Where Member States take action to ensure compliance with Community requirements, the authorities performing verifications of compliance should be sufficiently independent of air navigation service providers.

(10) Air navigation services, in particular air traffic services which are comparable to public authorities, require functional or structural separation and are organised according to very different legal forms in the various Member States.

(11) Where independent audits are required relating to providers of air navigation services, inspections by the official auditing authorities of the Member States where those services are provided by the administration, or by a public body subject to the supervision of the abovementioned authorities, should be recognised as independent audits, whether the audit reports drawn up are made public or not.

(12) It is desirable to extend the single European sky to European third countries, either within the framework of participation by the Community in the work of Eurocontrol, after the accession by the Community to Eurocontrol, or by means of agreements concluded by the Community with these countries.

(13) The accession of the Community to Eurocontrol is an important component in the creation of a pan-European airspace.

(14) In the process of creating the single European sky, the Community should, where appropriate, develop the highest level of cooperation with Eurocontrol in order to ensure regulatory synergies and consistent approaches, and to avoid any duplication between the two sides.

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(15) In accordance with the conclusions of the High Level Group, Eurocontrol is the body that has the appropriate expertise to support the Community in its role as regulator. Accordingly, implementing rules should be developed, for matters falling within the remit of Eurocontrol as a result of mandates to that organisation, subject to the conditions to be included in a framework of cooperation between the Commission and Eurocontrol.

(16) The drafting of the measures necessary in order to create the single European sky requires broad-based consultations of economic and social stakeholders.

(17) The social partners should be informed and consulted in an appropriate way on all measures having significant social implications. The Sectoral Dialogue Committee set up under Commission Decision 1998/500/EC of 20 May 1998 on the establishment of Sectoral Dialogue Committees promoting the dialogue between the social partners at European level[(6)] should also be consulted.

(18) Stakeholders such as air navigation service providers, airspace users, airports, manufacturing industry and professional staff representative bodies should have the possibility to advise the Commission on technical aspects of the implementation of the single European sky.

(19) The performance of the air navigation services system as a whole at European level should be assessed on a regular basis, with due regard to the maintenance of a high level of safety, to check the effectiveness of the measures adopted and to propose further measures.

(20) The sanctions provided for with respect to infringements of this Regulation and of the measures referred to in Article 3 should be effective, proportional and dissuasive, without reducing safety.

(21) The impact of the measures taken to apply this Regulation should be evaluated in the light of reports to be submitted regularly by the Commission.

(22) This Regulation does not affect the power of Member States to adopt provisions in relation to the organisation of their armed forces. This power may lead Member States to adopt measures to ensure that their armed forces have sufficient airspace for adequate education and training purposes. Provision should therefore be made for a safeguards clause to enable this power to be exercised.

(23) Arrangements for greater cooperation over the use of Gibraltar airport were agreed in London on 2 December 1987 by the Kingdom of Spain and the United Kingdom in a joint declaration by the Ministers of Foreign Affairs of the two countries. Such arrangements have yet to enter into operation.

(24) Since the objective of this Regulation, namely the creation of the single European sky, cannot be sufficiently achieved by the Member States, by reason of the transnational scale of the action, and can therefore be better achieved at Community level, while allowing for detailed implementing rules that take account of specific local conditions, the Community may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality as

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set out in that Article, this Regulation does not go beyond what is necessary in order to achieve this objective.

(25) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission[7].

(26) Article 8(2) of the Standard Rules of Procedure for committees[8] established in application of Article 7(1) of Decision 1999/468/EC provides a standard rule according to which the Chairman of a committee may decide to invite third parties to a meeting of that committee. If appropriate, the Chairman of the Single Sky Committee should invite representatives of Eurocontrol to take part in meetings as observers or experts,

HAVE ADOPTED THIS REGULATION:

[F1 Article 1

Objective and scope

1 The objective of the single European sky initiative is to enhance current air traffic safety tandards, to contribute to the sustainable development of the air transport system and to improve the overall performance of air traffic management (ATM) and air navigation services (ANS) for general air traffic in Europe, with a view to meeting the requirements of all airspace users. This single European sky shall comprise a coherent pan-European network of routes, network management and air traffic management systems based only on safety, efficiency and technical considerations, for the benefit of all airspace users. In pursuit of this objective, this Regulation establishes a harmonised regulatory framework for the creation of the single European sky.

2 The application of this Regulation and of the measures referred to in Article 3 shall be without prejudice to Member States' sovereignty over their airspace and to the requirements of the Member States relating to public order, public security and defence matters, as set out in Article 13. This Regulation and the measures referred to in Article 3 do not cover military operations and training.

3 The application of this Regulation and of the measures referred to in Article 3 shall be without prejudice to the rights and duties of Member States under the 1944 Chicago Convention on International Civil Aviation (the Chicago Convention). In this context, an additional objective of this Regulation is, in the fields it covers, to assist Member States in fulfilling their obligations under the Chicago Convention, by providing a basis for a common interpretation and uniform implementation of its provisions, and by ensuring that these provisions are duly taken into account in this Regulation and in the rules drawn up for its implementation.

4 The application of this Regulation to the airport of Gibraltar is understood to be without prejudice to the respective legal positions of the Kingdom of Spain and the United Kingdom of Great Britain and Northern Ireland with regard to the dispute over sovereignty over the territory in which the airport is situated.**]**

Textual Amendments

F1 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

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and (EC) No 552/2004 in order to improve the performance and sustainability of the European aviation system (Text with EEA relevance).

Article 2

Definitions

For the purpose of this Regulation and of the measures referred to in Article 3, the following definitions shall apply:

1. ‘air traffic control (ATC) service’ means a service provided for the purpose of:

   (a) preventing collisions:
   — between aircraft, and
   — in the manoeuvring area between aircraft and obstructions; and

   (b) expediting and maintaining an orderly flow of air traffic;

2. ‘aerodrome control service’ means an ATC service for aerodrome traffic;

3. ‘aeronautical information service’ means a service established within the defined area of coverage responsible for the provision of aeronautical information and data necessary for the safety, regularity, and efficiency of air navigation;

4. ‘air navigation services’ means air traffic services; communication, navigation and surveillance services; meteorological services for air navigation; and aeronautical information services;

5. ‘air navigation service providers’ means any public or private entity providing air navigation services for general air traffic;

6. ‘airspace block’ means an airspace of defined dimensions, in space and time, within which air navigation services are provided;

7. ‘airspace management’ means a planning function with the primary objective of maximising the utilisation of available airspace by dynamic time-sharing and, at times, the segregation of airspace among various categories of airspace users on the basis of short-term needs;

8. **[**[F1]‘airspace users’ means operators of aircraft operated as general air traffic;**]**

9. ‘air traffic flow management’ means a function established with the objective of contributing to a safe, orderly and expeditious flow of air traffic by ensuring that ATC capacity is utilised to the maximum extent possible, and that the traffic volume is compatible with the capacities declared by the appropriate air traffic service providers;

10. **[**[F1]‘air traffic management (ATM)’ means the aggregation of the airborne and ground-based functions (air traffic services, airspace management and air traffic flow management) required to ensure the safe and efficient movement of aircraft during all phases of operations;**]**

11. ‘air traffic services’ means the various flight information services, alerting services, air traffic advisory services and ATC services (area, approach and aerodrome control services);