EUROPEAN
COMMISSION

Brussels, 22.9.2020
COM(2020) 579 final

2013/0186 (COD)

Amended proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on the implementation of the Single European Sky

(recast)

(Text with EEA relevance)

{SWD(2020) 187 final}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

The Single European Sky (SES) initiative aims to improve the overall efficiency of the way in which European airspace is organised and managed through a reform of the industry providing air navigation services (ANS). Its development has involved two comprehensive legislative packages – "SES I" and "SES II" – and is composed of four regulations[1].

The experience gained with SES I since 2004 and SES II since 2009 has shown that the principles and general orientation of the SES are valid and should be maintained. Despite this body of legislation, however, costs of air traffic management (ATM) remain high and delays, detrimental to the environment, are persisting. This situation is due to limited capacity, as well as to inefficiencies in ATM entailing congestion, even under normal conditions. It is clear that the objectives set when SES was first established were not fully achieved within the expected timeframe.

The present amended proposal therefore aims not only to remove current inefficiencies in ATM that are detrimental to the environment, but also to strengthen other useful aspects regarding ATM, such as more agile data service provision and incentives, that can actively bring improvements and contribute to further reducing the environmental footprint of aviation.

The original proposal for a Regulation of the European Parliament and of the Council on the implementation of the Single European Sky (recast) (known under the abbreviation SES2+) was adopted by the Commission on 11 June 2013. It was intended to accelerate the implementation of the reform of air navigation services without departing from its original objectives and principles.

Meanwhile, the aviation sector has further evolved, with developments in technology and overall sustained traffic growth until early 2020, since the adoption of the proposal but more generally over the last decade. There has been a sharp drop in traffic caused by the COVID-19 pandemic which has shown that, structurally, the SES lacks resilience as service provision is hardly adjustable to traffic developments. The political context has equally evolved. Notably, the Paris Agreement was adopted and involves the need for aviation to contribute to CO2 emissions reductions (against the background of a continuing and rapid rise in emissions so

[1] The "Framework Regulation" (Regulation (EC) No 549/2004) - laying down the framework for the creation of the Single European Sky; the "Service Provision Regulation" (Regulation (EC) No 550/2004), which concerns the provision of air navigation services in the Single European Sky; the "Airspace Regulation" (Regulation (EC) No 551/2004), concerning the organisation and use of airspace in the Single European Sky; the "Interoperability Regulation" (Regulation (EC) No 552/2004), which concerns the interoperability of the European Air Traffic Management network.

The package composed of those Regulations in their initial version is known as "SES I". Amendments to all four Regulations were brought about by Regulation (EC) No 1070/2009, known as "SES II".

Regulation (EC) No 552/2004 has meanwhile been repealed, subject to a transitional period for certain provisions, through Regulation (EU) 2018/1139 on common rules in the field of civil aviation and establishing a European Union Aviation Safety Agency.

far). In December 2019, the Commission adopted its communication on the European Green Deal with the objective to reach carbon neutrality and a 90% reduction in transport emissions by 2050. The SES2+ legislative proposal should be updated to reflect these changes.

In order to enable the sector to better realise its economic potential while operating more sustainably, it is necessary to provide for a revision ensuring a more flexible provision of air navigation services, fit for the operating environment of today and of the future. The rules proposed should make it possible to adapt the capacity quickly and efficiently to increases or decreases in demand or to varying geographical needs. This would also contribute to the objectives of the European Green Deal and more concretely to the reduction of CO_2 emissions in the aviation sector, which is of key importance. The required reduction of those emissions involves a basket of different measures, many of which will deploy their effects only in the longer term. However, timely revision of the SES system, and application of the ensuing new rules, can bring first tangible CO_2 reductions already from the start of 2025.

Besides the need for overall revision, the specific reasons for amending the SES2+ proposal are among others:

- The text needs to be simplified and be aligned with relevant Union legislation having entered into force since the negotiations on the 2013 original SES2+ proposal stalled[2];
- Some definitions and rules need to be adapted so as to reflect stakeholder inputs and experience gained, as well as relevant conclusions from reports and studies recently carried out;[3]
- It appears appropriate to reflect recommendations from the Report of the Wise Persons Group on the future of the Single European Sky[4]
- The same applies to recommendations resulting from the European Parliament pilot project on the future architecture of the European Airspace and from the reports of the European Court of Auditors;
- It is likewise important to reflect recent technological developments in the aviation sector and the commitments expressed in the European Green Deal to decarbonise the transport sector.

Despite a number of changes, this amended proposal pursues the same objectives of the 2013 SES2+ proposal, even though in some instances through different means. In some cases, the solutions corresponding to the preferred options identified in the 2013 impact assessment have been maintained, but some of the solutions have been updated to reflect changes in the sector. Section 4 of the accompanying Commission Staff Working Document describes the modifications in detail and presents evidence in their support.

As the main objectives and preferred options set out in the impact assessment continue to be retained in essence, it is unlikely that the rules proposed herewith will entail significantly

---

2 Primarily Regulation (EU) No 2018/1139.

3 See Annex III of the accompanying Staff Working Document.

4 https://ec.europa.eu/transport/sites/transport/files/2019-04-report-of-the-wise-persons-group-on-the-future- of-the-single-european-sky.pdf

different economic, environmental or social impacts compared to the original SES2+ proposal It is therefore unnecessary to conduct a new impact assessment for the present amended proposal, beyond the analysis contained in the above mentioned Staff Working Document.

- **Consistency with existing policy provisions in the policy area**

The Commission's Aviation Strategy for Europe of 2015[5] called for a swift adoption, by the co-legislators, of the Regulation set out in the SES2+ proposal. The amendment to that proposal is fully in line with the Commmission's overall strategy for this policy area and, notably, should facilitate progress in respect of this legislative file.

The Single European Sky legislation is closely linked to the body of Union legislation regarding aviation safety and to the tasks entrusted to the European Union Aviation Safety Agency (the "Agency")[6]. This proposal is *inter alia* intended to simplify the legislation by eliminating certain overlaps between the existing rules and to align the Single European Sky legislation with the EASA Basic Regulation.

- **Consistency with other Union policies**

The improvement of the SES rules has been identified in the Commission communication on the European Green Deal as a measure that can contribute to the reduction of CO_2 emissions in the aviation sector. Such improvement wouldnotably reduce congestion and would thus allow the use of direct routes more frequently. The proposal also contains important elements geared at strengthening digitalisation and the internal market, which are two other Commission priorities.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The legal basis for the proposed amendment is Article 100(2) of the Treaty on the Functioning of the European Union.

- **Subsidiarity (for non-exclusive competence)**

Article 100(2) of the Treaty on the Functioning of the European Union gives the Union the right to act in this area, which is one of shared competence.

Air traffic management, more specifically has been covered since 2004 by provisions of Union law, which cannot be amended by Member States acting in their own right. On substance, and by nature, air traffic management affects the airspace of the entire European Union, and cross-border movements of persons, goods, services and capital are inherent to aviation and is hence dealt with most efficiently at Union level

[5] https://ec.europa.eu/transport/modes/air/aviation-strategy_en

[6] Regulation (EU) No 2018/1139.

Action at Union level is necessary to defragment the European airspace and thereby to allow more efficient management capable of tackling lack of capacity in an overall perspective and hence to combat delays and ensuing additional emissions.

- **Proportionality**

The proposal does not go beyond what is necessary to achieve its objectives. It focuses on elements supported by the various inputs listed in Annex III of the accompanying Staff Working Document.

- **Choice of the instrument**

The original proposal was to amend the existing Regulations while recasting them into a single one in the interest of clarity. This approach remains justified, and the same instrument of a recast Regulation should be used, subject to the necessary changes on substance.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

A new impact assessment beyond the one underpinning the initial proposal in 2013 [SWD (2013) 206 final] is deemed unnecessary because the main objectives and preferred options have not changed significantly, and because the economic, environmental or social impacts of the text proposed herewith should not differ significantly from the impacts that were expected to arise from the terms of the initial SES2+ proposal.

However, the Staff Working Document accompanying this amended proposal [add reference] presents additional evidence and analysis, notably in respect of updates compared to the solutions to achieve the preferred options of 2013. Those updates reflect changes in the sector and other new or amended means to achieve the objectives set. Additional elements have built upon various inputs collected over the last years. In 2017, the European Court of Auditors (ECA) issued a Special Report on the Single European Sky, containing recommendations to the Commission's attention. In 2019, the ECA followed up its earlier analysis with another Special Report on the regulation of ATM modernisation in the EU. The report makes recommendations to the Commission, which are either directly addressed in the present amended proposal or which can be addressed through Commission acts based on existing or proposed empowerments.

In 2019, a Wise Persons Group, composed of fifteen eminent experts in the field, was set up to assess the current situation and future needs for ATM in the EU. After several months of consultations in the form of hearings with all relevant operational stakeholders, the Group issued the Report of the Wise Persons Group on the future of the Single European Sky in April 2019, reflecting the Group's common view and containing ten recommendations[7]. In parallel, a Pilot Project was commissioned by the European Parliament on the future architecture of the European airspace, which also resulted in a report in March 2019. Under

[7] https://ec.europa.eu/transport/sites/transport/files/2019-04-report-of-the-wise-persons-group-on-the-future- of-the-single-european-sky.pdf

the Finnish Presidency of the Council of the European Union, a high-level conference on the future of the Single European Sky was held in September 2019, resulting in a signed joint stakeholder declaration urging action on the part of the European institutions to simplify the regulatory framework and institutional set-up to respond to the current and future needs of European ATM, making it fit for purpose.

4. BUDGETARY IMPLICATIONS

The proposal has no implications on the Union budget.

5. OTHER ELEMENTS

- **Detailed explanation of the specific provisions of the amended proposal**

As previously, it is proposed to merge the existing SES Regulations into a single regulation, which has necessitated a number of changes. The new instrument is structured in six chapters:

- Chapter I: General provisions

- Chapter II: National supervisory authorities

- Chapter III: Service provision

- Chapter IV: Network Management

- Chapter V: Airspace, interoperability and technological innovation

- Chapter VI: Final provisions

In this context, it is proposed to remove elements which overlap with Regulation (EU) 2018/1139. Likewise, certain details are in parallel being amended in Regulation (EU) 2018/1139, in order to ensure the correct alignment of the two Regulations. Regulation (EC) No 552/2004 has been repealed by Regulation (EU) 2018/1139 and is as such no longer taken into account in the present amended proposal. However, the objective of interoperability in the Single European Sky has been retained.

National supervisory authorities (Articles 3, 4 and 5, to be read in combination with newArticle 114i of Regulation (EU) 2018/1139, set out in a separate proposal presented at the same time[8])

One of the major needs for action identified in the impact assessment consists in strengthening the national supervisory authorities, as regards their independence and their expertise, but also as regards their resources. For that purpose, Article 3 describes the level of independence required from the authorities vis-à-vis the service providers they are intended to oversee, and from any other public or private entity. The application of the regime proposed requires a prior administrative reorganisation in some Member States, which is why it is also suggested to allow for a transitional period of 48 months in this respect (draft Article 46(2)). Furthermore, more explicit requirements are set out in respect of the competences and independence of the staff hired, in particular as regards persons in charge of strategic

[8] COM(2020) 577

decisions. To the same effect, draft Article 20, regarding the "cost base for charges", explicitly refers, as one eligible element, to the costs incurred by air traffic service providers in relation to their oversight and certification by national supervisory authorities. This rule creates scope for appropriate funding of national competent authorities by way of corresponding fees.

Inter alia with the aim to improve cooperation amongst the authorities, in the interest of furthering expertise and best practices, it is proposed to establish an appropriate forum for national supervisory authorities, in form of the Advisory Board for Performance Review (cf. draft new Articles 114a and 114i of Regulation (EU) 2018/1139).

It is proposed to clearly distinguish the tasks of the national supervisory authorities, competent for matters pertaining to the Single European Sky, from those of the national competent authorities in the area of aviation safety covered by Regulation (EU) 2018/1139. The former authorities should be responsible for economic certification related to financial conditions necessary for the provision of air navigation services, for monitoring the procurement of air navigation services as well as for applying the performance and charging schemes. The latter authorities remain in charge of safety certification and oversight and other tasks described in Regulation (EU) 2018/1139.

Economic certification of air navigation service providers and designation of air traffic service providers (Articles 6 and 7)

Safety-related certification and oversight of air navigation service providers are covered by Regulation 2018/1139. In addition to the certificates required thereunder, the provision of air navigation services should be conditioned upon the fulfilment of certain requirements regarding financial robustness, liability and insurance cover. For these purposes, it is proposed to provide for an economic certificate issued by national supervisory authorities.

The amended proposal also stipulates that the designation of air traffic service providers is to be made for a period of maximum 10 years. The aim is to ensure that the designation is reassessed periodically.

CNS, AIS, ADS, MET and terminal air traffic services (Article 8)

Services provided in support of air traffic services can offer cost-efficiency gains, are expected to allow for more flexibility and promote innovation. These possible improvements could be obtained through provision under market conditions, to which those services lend themselves in view of their nature. Hence, it is proposed to replace Article 9 of Regulation (EC) No 550/2004 by a rule concerning the the provision of CNS, AIS, ADS, MET and terminal air traffic services under market conditions.

Air traffic services, which are considered to be natural monopolies, remain in principle subject to a requirement of designation of a particular provider by the authorities in charge. However, air traffic service providers should be able to decide whether to procure CNS, AIS, ADS or MET services. Regarding terminal air traffic services, airport operators should be able to decide whether to procure services for aerodrome control, where such procurement would enable cost-efficiency gains to the benefit of aisprace users. Under the same condition, Member States should be able to allow the procurement of services for approach control.

In order to ensure a level playing field and to avoid discrimination, cross-subsidisation and distortion of competition, *en route* services should be organisationally separated from the other air navigation services. .

Common information services (Article 9)

Article 9 of this amended proposal contains provisions on the common information services needed to enable safe air traffic management of unmanned traffic (drones traffic). The Article is aligned to the recent regulatory developments regarding the operation of unmanned aircraft. It is proposed to regulate the pricing of such services so as to contain the cost of traffic management of unmanned aircraft.

Performance and charging schemes and Performance Review Body (Articles 10 to 25)

Economic regulation should be strengthened and rendered more efficient. To this end, it is proposed to entrust designated air traffic service providers themselves with the task to draft and submit their performance plans for approval by the competent authority. According to the case, that authority may be the Agency acting as Performance Review Body (PRB) or a national supervisory authority.

The Performance Review Body function, for which dedicated governance rules are set out in the proposal amending Regulation (EU) 2018/1139, is designed so as to allow relevant decisions to be taken with the necessary expertise and independence. The funding rules proposed should ensure that the Agency be endowed with the necessary resources. For reasons of procedural economy, it is proposed that decisions taken by the Agency acting as a PRB be subject to an appeal procedure open to the parties concerned.

The amended present proposal lays down the respective responsibilities of the Agency acting as PRB, and of the national supervisory authorities as regards the implementation of the performance and charging schemes. In particular, the Agency acting as PRB is in charge of assessing and approving the allocation of costs between *en route* and terminal services and of assessing and approving the performance plans for *en route* air navigation services. The national supervisory authorities are in charge of assessing and approving the performance plans for terminal air navigation services. For this purpose, separate plans for *en route* and for terminal air navigation services must be submitted by designated air traffic service providers which provide both types of services.

The terms of the charging scheme proposed are aligned to this new approach. In addition, it is proposed to establish mechanisms for the modulation of charges at Union-wide level, so as to support in particular improvements in environmental performance or service quality.

Finally, it is proposed to add certain requirements to the rules regarding the transparency of accounts of air navigation service providers (Article 25). The intention is to help preventing cross-subsidisation and ensuing distortions. The rule should in particular facilitate the application of Article 8 and 9.

Functional Airspace Blocks

The amended proposal no longer contains provisions pertaining to functional airspace blocks (FABs). The absence of such rules would not prevent Member States from maintaining or

creating FABs, if deemed useful. Nor would the absence of such rules prevent flexible forms of cooperation between air navigation service providers.

Network Management (Articles 26, 27 and 28)

Article 26 lists the network functions and sets out their objectives. Article 27 sets out the role of the Network Manager, which is to contribute to the execution of the network functions, and it establishes provisions regarding the appointment of the Network Manager, its tasks and the decision-making processes to be applied by it.

It is proposed that the network functions be subject to specific rules of the performance scheme (Article 16).

According to Article 28, the Network Manager is to publish its financial accounts and undergo an independent audit.

Availability and access to data (Article 31)

It is proposed to modify the rules regarding this issue (also compared to the initial proposal), so as to facilitate the provision of air traffic data services on a cross-border and Union-wide market. In addition, the terms of draft Article 31 are such as to ensure that new entrants to the data market have access to the relevant operational data even before certification. In order to prevent cross-subsidisation or double charging, it is proposed to establish adequate pricing principles.

Flexible Use of Airspace (Article 33)

Article 33 largely reflects Article 7 of Regulation (EC) 551/2004 and continues to allocate the responsibility of ensuring the application of the concept of flexible use of airspace to Member States. However, it also requires that this concept be applied in consistency with the ATM Master Plan. Article 33 complements the essential requirement established in Regulation (EU) 2018/1139 whereby airspace management must support the uniform application of flexible use of airspace.

SESAR coordination (Article 34)

Article 34 requires the relevant entities to cooperate with a view to ensuring effective coordination between the different phases of the SESAR project.

- **Changes compared to original proposal referred to in point 1**

The changes made in this amended proposal, compared with the proposal referred to in point 1, are the following:

<u>Recitals</u>

(1) Recital 1 is simplified to read:

'*Regulation (EC) No 549/2004 of the European Parliament and of the Council*[9]*, Regulation (EC) No 550/2004 of the European Parliament and of the Council*[10] *and Regulation (EC)*

[9] 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) (OJ L 96, 31.3.2004, p. 1).

No 551/2004 of the European Parliament and of the Council[11] *have been substantially amended. Since further amendments are to be made, those Regulations should be recast in the interests of clarity.*'.

(2) Recital 2 is deleted.

(3) Recital 3 is renumbered recital 2 and the following changes are introduced:

(a) after the reference to 'Regulation (EC) No 552/2004', the words 'of the European Parliament and of the Council[12]' are added;

(b) the unnumbered recital following recital 3 becomes the second sentence of recital 2 and is reworded as follows:

'*The adoption of the second package, namely, Regulation (EC) No 1070/2009 of the European Parliament and of the Council*[13]*, further strengthened the Single European Sky initiative by introducing the performance scheme and the Network Manager concepts to further improve the performance of the European ATM network.*';

(c) the following new third sentence is inserted:

'*Regulation (EC) No 552/2004 has been repealed by Regulation (EU) 2018/1139 of the European Parliament and of the Council, as the rules necessary for interoperability of ATM systems, constituents and procedures have been incorporated in that Regulation.*'.

(4) The following new recital 3 is inserted:

'*In order to take into account the changes introduced in Regulation (EU) 2018/1139, it is necessary to align the content of this Regulation with that of Regulation (EU) 2018/1139.*'.

(5) Recital 6 is reworded as follows:

'The simultaneous pursuit of the goals of augmentation of air traffic safety standards and improvement of the overall performance of ATM and air navigation services (ANS) for general air traffic in Europe requires that the human factor be taken into account. Therefore, the Member States should uphold 'just culture' principles. The opinions and recommendations of the Expert Group on the Human Dimension[14] *of the Single European Sky should be considered and taken into account.'.*

(6) The following new recital 7 is inserted:

'*Improvements in the environmental performance of ATM also directly contribute to the achievement of the objectives contained in the Paris Agreement and in the Commission's European Green Deal, in particular through the reduction of aviation emissions.*'.

(7) Recital 7 is renumbered recital 8 and reworded as follows:

---

10 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) (OJ L 96, 31.3.2004, p. 10).

11 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) (OJ L 96, 31.3.2004, p. 20).

12 Regulation (EC) No 552/2004 of the European Parliament and of the Council of 10 March 2004 on the interoperability of the European air traffic management network (the interoperability Regulation) (OJ L 96, 31.3.2004, p. 26).

13 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 (OJ L 300, 14.11.2009, p. 34).

14 C(2017) 7518 final

‘In 2004, Member States have adopted a general statement on military issues related to the Single European Sky. 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.’

(8) Recital 8 is renumbered recital 9, and recital 9 is deleted.

(9) In recital 10, the last sentence is replaced by the following:

‘*This should not prevent a national supervisory authority from being part of a regulatory authority competent for several regulated sectors if that regulatory authority fulfils the independence requirements, or from being joined in terms of its organisation with the national competition authority.*’.

(10) The following new recital 11 is added:

‘*The financing of the national supervisory authorities should guarantee their independence, and should allow them to operate in accordance with the principles of fairness, transparency, non-discrimination and proportionality. Appropriate procedures for appointing staff should contribute to guaranteeing the independence of the national supervisory authorities, ensuring in particular that the appointment of persons in charge of strategic decisions is made by a public authority which does not directly exert ownership rights over air navigation service providers.*’.

(11) Recital 11 is renumbered recital 12 and the first sentence is reworded as follows:

‘National supervisory authorities have a key role to play in the implementation of the Single European Sky and they should therefore cooperate with each other in order to enable the exchange of information on their work and decision-making principles, best practices and procedures as well as with regard to the application of this Regulation and to develop a common approach, including through enhanced cooperation at regional level.’.

(12) Recital 12 is renumbered recital 43.

(13) Recital 13 is deleted.

(14) The following new recitals 13 and 14 are added:

‘*(13) The cooperation between air traffic service providers is an important tool for improving the performance of the European ATM system and should be encouraged. Member States should be able to set up cooperation mechanisms not limited to predefined forms of cooperation and geographical areas.*’.

(14) The safety certification and safety oversight of air navigation service providers are conducted by the national competent authorities or by the European Union Aviation Safety Agency (the Agency), in accordance with the requirements and processes laid down in Regulation (EU) 2018/1139. Additional requirements related to financial robustness, liability and insurance cover are necessary for the provision of air navigation services and should be subject to an economic certificate. An air navigation service provider should only be able to offer services in the Union where it holds both a safety certificate and the economic certificate.’.

(15) Recital 14 is renumbered recital 15.

(16) The following new recitals 16 to 33 are inserted:

‘*(16) Air traffic services, provided on an exclusive basis, should be subject to designation and minimum public interest requirements.*

(17) Air traffic service providers or airport operators should have the choice to procure communication, navigation and surveillance services (CNS), aeronautical information services (AIS), air traffic data services (ADS), meteorological services (MET) or terminal air traffic services under market conditions, without prejudice to safety requirements, where they find that such procurement enables cost-efficiency gains. The possibility to resort to such procurement is expected to allow for more flexibility and to promote innovation in services, without affecting the specific needs of the military regarding confidentiality, interoperability, system resilience, data access, and ATM security.

(18) Where terminal air traffic services are procured, they should not be subject to the charging scheme set out in this Regulation, nor to, Article 1(4) of Directive 2009/12/EC of the European Parliament and of the Council[15]*, linked to the applicability of that scheme.*

(19) The provision of en route *air traffic services should be organisationally separated from the provision of CNS, AIS, ADS, MET and terminal air traffic services, including through the separation of accounts, in order to ensure transparency and avoid discrimination, cross-subsidisation and distortion of competition.*

(20) Where applicable, the procurement of air navigation services should be carried out in accordance with Directive 2014/24/EU of the European Parliament and of the Council[16] *and Directive 2014/25/EU of the European Parliament and of the Council*[17]*. National supervisory authorities should ensure that procurement requirements for air navigation services are fulfilled.*

(21) The traffic management of unmanned aircraft requires the availability of common information services. In order to contain the costs of such traffic management, prices for common information services should be based on cost and a reasonable mark-up for profit, and should be subject to approval by national supervisory authorities. To enable the provision of the service, the required data should be made available by air navigation service providers.

(22) The performance and charging schemes are intended to make air navigation services provided under conditions other than market conditions more cost-efficient and to promote better service quality and should, to this end, include relevant and appropriate incentives. In view of this objective, the performance and charging schemes should not cover services supplied under market conditions.

(23) To be most effective, the necessary oversight regarding the performance and charging schemes should be directed at designated air traffic service providers as such.

---

15 Directive 2009/12/EC of the European Parliament and of the Council of 11 March 2009 on airport charges (OJ L 70, 14.3.2009, p. 11).

16 Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ L 94, 28.3.2014, p. 65).

17 Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC (OJ L 94, 28.3.2014, p. 243).

(24) The responsibilities for the oversight in respect of the performance and charging schemes should be appropriately divided.

(25) Given the cross border and network elements inherent in the provision of en route *air navigation services and the fact that, as a consequence, performance is notably to be assessed against Union-wide performance targets, a Union body should be in charge of the assessment and approval of the performance plans and performance targets for* en route *air navigation services, subject to judicial review by an appeal body and eventually by the Court of Justice. In order to ensure that the tasks be carried out with a high level of expertise and necessary independence, that Union body should be the Agency acting as Performance Review Body (PRB), functioning in accordance with the dedicated governance rules set out in Regulation (EU) 2018/1139. Given their knowledge of the local circumstances, necessary to assess terminal air navigation services, national supervisory authorities should be in charge of the assessment and approval of the performance plans and performance targets for terminal air navigation services. The allocation of costs between* en route *and terminal air navigation services constitutes a single operation, relevant to both types of services, and should therefore be subject to the oversight of the Agency acting as PRB.*

(26) Draft performance plans in the area of en route *and terminal navigation services should be consistent with respective Union-wide performance targets and conform to certain qualitative criteria, so as to ensure as much as possible that the targets set are effectively met. The assessment procedure should ensure that shortcomings are swiftly corrected.*

(27) The performance of the network functions should be subject to criteria specific to them, having regard to the peculiar nature of these functions. The network functions should be subject to performance targets in the key performance areas of the environment, capacity and cost-efficiency.

(28) The charging scheme should be based on the principle that airspace users should pay for the cost incurred for the provision of the services received but that only cost imputable to such service and not covered otherwise should be taken into account. The costs related to the Network Manager should be included in the determined costs eligible to be charged to airspace users. Charges should encourage the safe, efficient, effective and sustainable provision of air navigation services with a view to achieving a high level of safety and cost-efficiency and meeting the performance targets and they should stimulate integrated service provision, whilst reducing the environmental impact of aviation.

(29) Mechanisms for modulation of charges to improve environmental performance and service quality, notably through increased use of sustainable alternative fuels, increased capacity and reduced delays, while maintaining an optimum safety level, should be set up at Union-wide level given the cross-border nature of aviation. National supervisory authorities should also have the possibility to establish mechanisms at local level regarding terminal services.

(30) In order to incentivise airspace users to fly the shortest route, in particular in times of congestion, it should be possible to establish a common unit rate for en route *services across the Single European Sky airspace. The establishment of any such common unit rate should be revenue neutral for air traffic service providers.*

(31) Provision should be made for the transparency of the accounts of air navigation service providers, as one means to prevent cross-subsidisation and ensuing distortions.

(32) ATM network functions should contribute to the sustainable development of the air transport system and support the achievement of Union-wide performance targets. They should ensure the sustainable, efficient and environmentally optimal use of airspace and of scarce resources, reflect operational needs in the deployment of the European ATM network infrastructure and should provide support in case of network crises. A number of tasks contributing to the execution of these functions should be carried out by a Network Manager, whose action should involve all operational stakeholders concerned.

(33) In the cooperative decision making process for the decisions to be taken by the Network Manager, the interest of the network should prevail. Parties to the cooperative decision-making process should therefore act to the maximum extent possible with a view to improving the functioning and performance of the network. The procedures for the cooperative decision-making process should promote the interest of the network, and be such that issues are resolved and consensus found wherever possible.'.

(17) Recital 15 is renumbered recital 39 and reworded as follows:

'*The concept of common projects should aim at implementing, in a timely, coordinated and synchronised manner, the essential operational changes identified in the European ATM Master Plan which have a network-wide impact. The Commission should be charged with carrying out a cost-benefit analysis in respect of the funding with a view to speedying up the deployment of the SESAR project.*'

(18) Recital 16 is deleted.

(19) Recital 17 is renumbered recital 37 and reworded as follows:

'*The safe and efficient use of airspace can only be achieved through close cooperation between civil and military airspace users, which in practice is mainly based on the concept of flexible use of airspace and effective civil-military coordination as established by ICAO. Rules should be established with a view to ensuring the application of this concept, and the Commission should be empowered to provide for measures ensuring greater harmonisation.*'.

(20) Recital 18 is renumbered recital 35, and is reworded as follows:

'*Availability of relevant operational data is essential for enabling the flexible provision of air traffic data services, on cross-border and on Union-wide bases. Therefore, such data should be made available to relevant stakeholders, including to prospective new providers of air traffic data services. Accuracy of information including on airspace status and on specific air traffic situations and timely distribution of this information to civil and military controllers has a direct impact on the safety and efficiency of operations. Timely access to up-to-date information on airspace status is essential for all parties wishing to take advantage of airspace structures made available when filing or re-filing their flight plans.*'.

(21) Recital 19 is renumbered recital 36, and is reworded as follows:

'*The provision of complete, high-quality and timely aeronautical information has a significant impact on safety and on facilitating access to Union airspace and the possibilities of moving within it. Access to those data should be facilitated through an appropriate information infrastructure.*'.

(22) Recitals 20-25 are deleted.

(23) Recital 26 is renumbered recital 34 and is reworded as follows:

'*To enhance the customer focus of air traffic service providers and to increase the possibility of airspace users to influence decisions which affect them, the consultation and participation*

of stakeholders in major operational decisions of the air traffic service providers should be made more effective.'.

(24) The following new recital 38 is inserted:

'*The SESAR project is aimed at enabling the safe, efficient and environmentally sustainable development of air transport by modernising the European and global ATM system. In order to contribute to its full effectiveness, proper coordination between the phases of the project should be ensured. The European ATM Master Plan should result from the SESAR definition phase, and should contribute to achieving the Union-wide performance targets.*'.

(25) The following new recital 40 is inserted:

'*Compliance with the requirements for ATM systems and constituents established by Regulation (EU) 2018/1139 should ensure the interoperability of those systems and constituents, to the benefit of the Single European Sky.*'.

(26) Recital 27 is deleted.

(27) Recital 28 is renumbered recital 41 and amended as follows:

(a) in the first sentence, the words '*and performance scheme*' are deleted;

(b) the third and fourth sentences are replaced by the following:

'*When adopting delegated acts under this Regulation, it is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.*'.

(28) Recital 29 is deleted.

(29) Recital 30 is renumbered recital 42 and reworded as follows:

'*In order to ensure uniform conditions for the implementation of this Regulation, in particular with regard to the modalities of recruitment and selection procedures for national supervisory authorities, rules on the economic certification of air navigation service providers, rules for the implementation of the performance and charging schemes, in particular on the setting of Union-wide performance targets, the classification of* en route *and terminal air navigation services, the criteria and procedures for the assessment of the draft performance plans and performance targets of air traffic service providers and the Network Manager, the monitoring of performance, rules for the provision of information on costs and charges, the content and establishment of the cost base for charges and the setting of unit rates for air navigation services, incentive mechanisms and risk-sharing mechanisms, the appointment of the Network Manager and the terms and conditions of such appointment, the tasks of the Network Manager and the governance mechanisms to be applied by it, rules on the execution of the network functions, modalities of the consultation of stakeholders on major operational decisions of the air traffic service providers, requirements regarding the availability of operational data, conditions of access and setting of access prices, application of the concept of flexible use of airspace, the establishment of common projects and the governance mechanisms applicable to them, implementing powers should be conferred on the*

Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council[18]*.'.*

(30) Recitals 31 and 32 are deleted.

(31) Recital 33 is renumbered recital 44.

(32) Recital 34 is deleted.

(33) Recitals 35 and 36 are replaced by the following new recital 45:

'*In view of the legal position of the Kingdom of Spain with regard to sovereignty and jurisdiction on the territory where the airport is located, this Regulation should not apply to Gibraltar airport.*'.

(34) Recital 37 is renumbered recital 46. The first sentence is reworded as follows:

'Since the objective of this Regulation, namely the implementation of the Single European Sky, cannot be sufficiently achieved by the Member States but can rather, by reason of the transnational scale of the action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union.'.

<u>Chapter I: General Provisions</u>

(35) In Article 1 (Subject matter and scope), the following changes are introduced:

(a) Paragraph 1 is reworded as follows:

'This Regulation lays down rules for the creation and effective functioning of the Single European Sky in order to reinforce current air traffic safety standards, to contribute to the sustainable development of the air transport system and to improve the overall performance of air traffic management and air navigation services for general air traffic in Europe, with a view to meeting the requirements of all airspace users. The Single European Sky shall comprise a coherent pan-European network, a progressively more integrated airspace, network management and air traffic management systems based on safety, efficiency, interoperability and technological modernisation, for the benefit of all airspace users, citizens and the environment.';

(b) In paragraph 2, the reference to Article 38 is replaced by a reference to Article 44;

(c) In paragraph 3, the second sentence is reworded as follows:

'*In this context, this Regulation aims to assist, in the fields it covers, 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.*';

(d) Paragraph 4 is reworded as follows:

[18] Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

'This Regulation shall apply to the airspace within the ICAO EUR region where Member States are responsible for the provision of air traffic services. Member States may also apply this Regulation to airspace under their responsibility within other ICAO regions, on the condition that they inform the Commission and the other Member States thereof.';

(e) Paragraph 5 is replaced by the following:

'*[In the event the Regulation is adopted before the end of the transition period: This Regulation shall not apply to Gibraltar airport.]*';

(f) The following paragraph 6 is added:

'*Unless otherwise provided, where reference is made to the European Union Aviation Safety Agency (the Agency), such reference shall be understood as aimed at the Agency in its capacity as safety authority and not as authority in charge of performance review.*'.

(36) In Article 2 (Definitions), in respect of points 1 to 22, the following changes and the following insertions are made:

(a) Point 1 is renumbered point 5 and point (a) thereof is reworded as follows:

'*(a) preventing collisions:*

(i) between aircraft;

(ii) in the manoeuvring area between aircraft and obstructions;';

(b) Point 2 is renumbered point 1 and is reworded as follows:

'*'aerodrome control service' means an air traffic control (ATC) service for aerodrome traffic;'*;

(c) Point 3 is renumbered point 2 and is reworded as follows:

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

(d) Point 4 is reworded as follows:

'*'air navigation services (ANS)' means air traffic services; communication, navigation and surveillance services (CNS); meteorological services (MET); aeronautical information services (AIS); and air traffic data services (ADS);*';

(e) Point 5 is renumbered point 3 and is reworded as follows:

'*'air navigation service provider' means a public or private entity providing one or more air navigation services for general air traffic;*';

(f) Points 6 and 7 are renumbered points 11 and 12 respectively. Point 12 is reworded as follows:

'*'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;*';

(g) The following points 6 and 7 are inserted:

'*6. 'air traffic data services' means services consisting in the collection, aggregation and integration of operational data from providers of surveillance services, from providers of MET and AIS and network functions and from other relevant entities, or the provision of processed data for air traffic control and air traffic management purposes*;

7. 'air traffic flow and capacity management (ATFCM)' means a service aiming at protecting air traffic control from over-delivery and optimising the use of the available capacity;';

(h) Point 8 is renumbered point 14 and is reworded as follows:

'*'airspace users' means operators of aircraft operated in accordance with general air traffic rules;*';

(i) Point 9 is renumbered point 8 and is reworded as follows:

'*'air traffic flow management (ATFM)' means a function or service established with the objective of contributing to a safe, orderly and expeditious flow of air traffic covering the full trajectory 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;*';

(j) Point 10 is renumbered point 9 and is reworded as follows:

'*'air traffic management (ATM)' means the aggregation of the airborne and ground-based functions or services (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;*';

(k) Point 11 is renumbered point 10;

(l) Point 12 is renumbered point 17 and is reworded as follows:

'*'area control service' means an ATC service for controlled flights in control areas;*';

(m) Point 13 is renumbered point 16;

(n) The following point 13 is inserted:

'*'airspace structure' means a specific volume of airspace defined with a view to ensuring the safe and optimal operation of aircraft;*';

(o) Point 14 is renumbered point 33 and is reworded as follows:

'*'European ATM Master Plan' means the plan endorsed by Council Decision 2009/320/EC*[19]*, in accordance with Article 1(2) of Council Regulation (EC) No 219/2007*[20]*, and as subsequently amended;*';

(p) Points 15 and 16 are deleted;

(q) Point 17 is renumbered point 21 and is reworded as follows:

'*'certificate' means a document issued by the Agency, by a national competent authority or by a national supervisory authority, in any form complying with national law, which confirms that an air traffic management and air navigation service provider meets the requirements for providing a specific service;'*;

(r) Point 18 is renumbered point 23;

(s) The following point 18 is inserted:

---

[19] Council Decision of 30 March 2009 endorsing the European Air Traffic Management Master Plan of the Single European Sky ATM Research (SESAR) project, OJ L 95, 9.4.2009, p. 41

[20] 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), OJ L 64, 2.3.2007, p. 1

‘*‘baseline value’ means a value defined by way of estimation for the purpose of setting performance targets and concerning determined costs or determined unit costs during the year preceding the start of the relevant reference period;*’;

(t) Point 19 is renumbered point 24;

(u) The following point 19 is inserted:

‘*‘benchmark group’ means a group of air traffic service providers with a similar operational and economic environment;*’;

(v) Point 20 is renumbered point 28 and is reworded as follows:

‘*‘declaration’ means, for the purposes of air traffic management and air navigation services, a declaration as defined in Article 3(10) of Regulation (EU) 2018/1139;*’;

(w) The following point 20 is inserted:

‘*‘breakdown value’ means the value obtained, for a given air traffic service provider, by breaking down a Union-wide performance target to the level of each air traffic service provider and serving as a reference for assessing consistency of the performance target set in draft performance plan with the Union-wide performance target;*’;

(x) Point 21 is renumbered point 34 and is reworded as follows:

‘*‘flexible use of airspace’ means an airspace management concept based on the fundamental principle that airspace should not be designated as either pure civil or military airspace, but rather be considered as a continuum in which all user requirements have to be accommodated to the extent possible;’;*

(y) Point 22 is renumbered point 35;

(z) The following point 22 is inserted:

‘*‘common information service (CIS)’ means a service consisting in the collection of static and dynamic data and their dissemination to enable the provision of services for the management of traffic of unmanned aircraft;*’.

(37) In Article 2 (Definitions), the following changes in respect of points 23 to 38 and the following insertions are made:

(a) Point 23 is renumbered point 15

(b) Point 24 is deleted.

(c) Point 25 is renumbered point 36 and is reworded as follows:

‘*‘general air traffic’ means all movements of civil aircraft, as well as all movements of State aircraft (including military, customs and police aircraft) when those movements are carried out in conformity with the procedures of the International Civil Aviation Organisation (ICAO) established by the 1944 Chicago Convention on International Civil Aviation;*’;

(d) Point 26 is renumbered point 37. The second sentence is deleted;

(e) The following points 25 and 26 are inserted:

‘*25.‘control area’ means a controlled airspace extending upwards from a specified limit above the earth;*

26.‘cooperative decision-making’ means a process in which decisions are made based on interaction and consultation with Member States, operational stakeholders and other actors as appropriate;’;

(f) Point 27 is renumbered point 38 and is reworded as follows:

‘ *‘meteorological services’ means the facilities and services that provide aircraft with meteorological forecasts warnings, briefings and observations for air navigation purposes , as well as any other meteorological information and data provided by States for aeronautical use;*’;

(g) Point 28 is renumbered point 41 and is reworded as follows:

‘ *‘navigation services’ means the facilities and services that provide aircraft with positioning and timing information;*’;

(h) Point 29 is renumbered point 44 and is reworded as follows:

‘ *‘operational data’ means information concerning all phases of flight that is required for operational purposes by air navigation service providers, airspace users, airport operators and other actors involved;*’;

(i) Point 30 is renumbered point 46 and is reworded as follows:

‘ *‘putting into service’ means the first operational use after the initial installation or upgrade of a system;*’;

(j) Point 31 is renumbered point 47.

(k) Point 32 is renumbered point 53 and is reworded as follows:

‘ *‘surveillance services’ means the facilities and services used to determine the respective positions of aircraft to allow safe separation;’*;

(l) The following points 29 to 32 are inserted:

‘*29.‘*en route *air navigation services’ means air traffic services related to control of an aircraft from the end of the take off and initial climb phase to the commencement of the approach and landing phase and the underlying air navigation services necessary to provide* en route *air traffic services;*

*30.‘*en route *charging zone’ means a volume of airspace that extends from the ground up to, and including, upper airspace, where* en route *air navigation services are provided and for which a single cost base is established;*

31.‘Eurocontrol’ is 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 Navigation;

32.‘European air traffic management network’ (EATMN) means the collection of systems, listed in point 3.1 of Annex VIII to Regulation (EU) 2018/1139, enabling air navigation services in the Union to be provided, including the interfaces at boundaries with third countries;’;

(m) Point 33 is renumbered point 54;

(n) Point 34 is renumbered point 57.

(o) Point 35 is renumbered point 27 and is reworded as follows:

‘*‘cross-border services’ means any situation where air navigation services are provided in one Member State by a service provider having its principal place of business in another Member State;’*;

(p) Point 36 is renumbered point 40 and is reworded as follows:

‘*‘national supervisory authority’ means the national body or bodies entrusted by a Member State with the tasks under this Regulation other than the tasks covered by the national competent authority;*’;

(q) Points 37 and 38 are deleted;

(r) The following point 39 is inserted:

‘*‘national competent authority’ means the entities as defined in point (34) of Article 3 of Regulation (EU) 2018/1139;*’;

(s) The following point 42 and 43 are inserted:

‘*42. ‘network crisis’ means a state of inability to provide air traffic management and air navigation services at required level resulting in a major loss of network capacity, or a major imbalance between network capacity and demand, or a major failure in the information flow in one or several parts of the network following an unusual and unforeseen situation;*

43. ‘Network Manager’ means the entity entrusted with the tasks necessary to contribute to the execution of the network functions referred to in Article 26, in accordance with Article 27;’;

(t) The following point 45 is inserted:

‘*‘performance plan’ means a plan drafted or adopted, according to the case, by air traffic service providers and the Network Manager and aimed at improving the performance of air navigation services and network functions;*’.

(38) In Article 2 (Definitions), the following additional insertions are made:

(a) The following points 48 to 52 are inserted:

‘*48. ‘SESAR definition phase’ means the phase comprising the establishment and updating of the long-term vision of the SESAR project, of the related concept of operations enabling improvements at every stage of flight, of the required essential operational changes within the EATMN and of the required development and deployment priorities;*

49. ‘SESAR deployment phase’ means the successive phases of industrialisation and implementation, during which the following activities are conducted: standardisation, production and certification of ground and airborne equipment and processes necessary to implement SESAR solutions (industrialisation); and procurement, installation and putting into service of equipment and systems based on SESAR solutions, including associated operational procedures (implementation);

50.‘SESAR development phase’ means the phase during which research, development and validation activities aiming to deliver mature SESAR solutions are conducted;

51.‘SESAR project’ means the project to modernise air traffic management in Europe, aimed at providing the Union with a high performance, standardised and interoperable air traffic

management infrastructure, and consisting in an innovation cycle that includes the SESAR definition phase, the SESAR development phase and the SESAR deployment phase;

52.'SESAR solution' means a deployable output of the SESAR development phase introducing new or improved standardised and interoperable operational procedures or technologies;';

(b) The following points 55 and 56 are inserted:

'*55. 'terminal air navigation services' means aerodrome control services or aerodrome flight information services which include air traffic advisory services and alerting services, air traffic services related to the approach and departure of aircraft within a distance from the airport concerned necessary to meet operational requirements and the necessary underlying air navigation services;*

56. 'terminal charging zone' means an airport or a group of airports, located within the territories of a Member State, where terminal air navigation services are provided and for which a single cost base is established;';

<u>Chapter II: National Authorities</u>

(39) The title of Chapter II is replaced by the following: '*National Supervisory Authorities*'.

(40) The title of Article 3 is replaced by the following: '*Nomination, establishment and requirements regarding national supervisory authorities*'.

(41) The text of Article 3 is changed as follows:

(a) Paragraph 1 is reworded as follows:

'*Member States shall, jointly or individually, either nominate or establish a body or bodies as their national supervisory authority in order to assume the tasks assigned to such authority by this Regulation'*;

(b) Paragraph 2 is renumbered paragraph 3 and reworded as follows:

'Without prejudice to paragraph 1, the national supervisory authorities shall be legally distinct and independent from any other public or private entity in terms of their organisation, functioning, legal structure and decision-making.

The national supervisory authorities shall also be independent in terms of their organisation, funding decisions, legal structure and decision-making from any air navigation service provider.';

(c) Paragraph 3 is renumbered paragraph 4 and reworded as follows:

'*Member States may set up national supervisory authorities which are competent for several regulated sectors, if those integrated regulatory authorities fulfil the independence requirements set out in this Article. The national supervisory authority may also be joined in respect of its organisational structure with the national competition authority referred to in Article 11 of Council Regulation (EC) No 1/2003, if the joint body fulfils the independence requirements set out in this Article.*';

(d) Paragraph 4 is deleted.

(e) Paragraph 5 is renumbered paragraph 2 and reworded as follows:

‘*The national supervisory authorities shall exercise their powers impartially, independently and transparently and shall be organised, staffed, managed and financed accordingly*.’;

(f) Paragraph 6 is replaced by paragraphs 5 and 6, which read as follows:

‘*5. Staff of the national supervisory authorities shall comply with the following requirements:*

(a) they shall be recruited under clear and transparent processes which ensure their independence;

(b) they shall be selected on the basis of their specific qualifications, including appropriate competence and relevant experience or they shall be subject to appropriate training.

Staff of national supervisory authorities shall act independently, in particular by avoiding conflicts of interest between air navigation service provision and the execution of their tasks.

6. In addition to the requirements set out in paragraph 5, persons in charge of strategic decisions shall be appointed by an entity of the Member State concerned which does not directly exert ownership rights over air navigation service providers. Member States shall decide whether these persons are appointed for a fixed and renewable term, or on a permanent basis which only allows dismissal for reasons not related to their decision-making. Persons in charge of strategic decisions shall not seek or take instructions from any government or other public or private entity when carrying out their functions for the national supervisory authority and shall have full authority over the recruitment and management of its staff.

They shall refrain from any direct or indirect interest that may be considered prejudicial to their independence and which may influence the performance of their functions. To that effect, they shall make an annual declaration of commitment and declaration of interests indicating any direct or indirect interests.

Persons in charge of strategic decisions, audits or other functions directly linked to performance targets or oversight of air navigation service providers, shall not hold any professional position or responsibility with any air navigation service provider after their term in the national supervisory authority, for at least a period of two years.’;

(g) Paragraph 7 is reworded as follows:

‘*Member States shall ensure that national supervisory authorities have the necessary financial resources and capabilities to carry out the tasks assigned to them under this Regulation in an efficient and timely manner. The national supervisory authorities shall manage their staff based on their own appropriations, to be set in proportion to the tasks to be fulfilled by the authority in accordance with Article 4.*’;

(h) Paragraph 8 is renumbered paragraph 9;

(i) The following paragraph 8 is inserted:

‘*A Member State may request the Agency acting as Performance Review Body (PRB), to carry out the tasks related to the implementation of the performance and charging schemes laid down in Articles 14, 17, 19, 20, 21, 22 and 25, and in the implementing acts referred to in Articles 18 and 23 and for which the national supervisory authority of that Member State is responsible under this Regulation and the delegated and implementing acts adopted on the basis thereof.*

Once the Agency acting as PRB accepts such a request, it shall become the supervisory authority responsible for the tasks covered by that request and the national supervisory authority of the requesting Member State shall be relieved of the responsibility for those tasks. The rules contained in Regulation (EU) 2018/1139 and pertaining to the Agency acting as PRB shall apply to the performance of these tasks, including as regards the levying of fees and charges.';

(j) Paragraph 9 is renumbered paragraph 10 and amended as follows:

– the words 'paragraph 6(a) and (b)' are replaced by 'paragraph 5, points (a) and (b)';

– the words '*Article 27(3)*' are replaced by '*Article 37(3)*'.

(42) Article 4 is changed as follows:

(a) Paragraph 1 is replaced by the following:

'*The national supervisory authorities referred to in Article 3 shall:*

(a) conduct the activities necessary for the issuance of the economic certificates referred to in Article 6, including the oversight of the holders of those economic certificates;

(b) oversee the correct application of procurement requirements in accordance with Article 8(6);

(c) apply the performance and charging schemes set out in in Articles 10 to 17 and 19 to 22 and the implementing acts referred to in Articles 18 and 23, within the limits of their tasks defined in those articles and acts, and oversee the application of the Regulation regarding the transparency of accounts of designated air traffic service providers in accordance with Article 25.';

(b) Paragraph 2 is renumbered paragraph 3 and reworded as follows:

'*Each national supervisory authority shall conduct the necessary inspections, audits and other monitoring activities to identify possible infringements by entities subject to their oversight under this Regulation of the requirements set out in this Regulation and the delegated and implementing acts adopted on the basis thereof.*

It shall take all necessary enforcement measures which may, where appropriate, include the amendment, limitation, suspension or revocation of economic certificates issued by them in accordance with Article 6.

The air navigation service providers, airport operators and the common information service providers concerned shall comply with the measures taken by the national supervisory authorities to this effect.';

(c) The following paragraph 2 is inserted:

'*The national supervisory authorities shall be responsible for assessing and approving the price setting for the provision of the common information service, in accordance with Article 9.*';

(43) Article 5 is changed as follows:

(a) Paragraph 1 is replaced by the following:

'*The national supervisory authorities shall exchange information and work together in a network in the context of the Advisory Board for Performance Review referred to in Article 114a of Regulation (EU) 2018/1139.*';

(b) Paragraph 2 is reworded as follows:

‘*The national supervisory authorities shall cooperate, where appropriate through working arrangements, for the purposes of mutual assistance in their monitoring and supervisory tasks and handling of investigations and surveys.*’;

(c) Paragraph 3 is replaced by the following:

‘*National supervisory authorities shall facilitate the provision of cross-border services by air navigation service providers for the purpose of improving network performance. In the case of provision of air navigation services in an airspace falling under the responsibility of two or more Member States, the Member States concerned shall conclude an agreement on the supervision to be carried out by them under this Regulation, of the air navigation service providers concerned. The national supervisory authorities concerned may establish a plan specifying the implementation of their co-operation with a view to giving effect to that agreement.*’;

(d) Paragraph 4 is deleted;

(e) Paragraph 5 is renumbered paragraph 4 and reworded as follows:

‘*In the case of provision of air navigation services in an airspace falling under the responsibility of another Member State , the agreements referred to in paragraph 3 shall provide for the mutual recognition of the discharge, by each of the authorities, of the supervisory tasks set out in this Regulation and of the results of the discharge of these tasks. They shall also specify which national supervisory authority shall be in charge of the economic certification set out in Article 6.*’;

(f) Paragraph 6 is renumbered paragraph 5 and is reworded as follows:

‘*Where permitted by national law and with a view to regional cooperation, national supervisory authorities may also conclude agreements on the division of responsibilities regarding the supervisory tasks. They shall notify the Commission of these agreements.*’.

(44) Article 6 is deleted.

<u>Chapter III: Service Provision</u>

(45) Article 7, together with Article 28, is replaced by Article 38, carrying the title ‘*Consultation of stakeholders*’ and worded as follows:

‘*1. Member States, national supervisory authorities, the Agency whether or not it is acting as PRB and the Network Manager shall establish consultation mechanisms for appropriate consultation of stakeholders for the exercise of their tasks in the implementation of this Regulation.*

2. The Commission shall establish such a mechanism at Union level to consult on matters related to the implementation of this Regulation where appropriate. The specific Sectoral Dialogue Committee set up under Commission Decision 98/500/EC shall be involved in the consultation.

3. The stakeholders may include:

(a) air navigation service providers or relevant groups representing them;

(b) the Network Manager;

(c) airport operators or relevant groups representing them;

(d) airspace users or relevant groups representing them;

(e) the military;

(f) the manufacturing industry;

(g) professional staff representative bodies;

(h) relevant non-governmental organisations.'.

(46) Article 8 is renumbered Article 6. The title of the Article is replaced by '*Economic certification and requirements for air navigation service providers*' and its text is replaced by the following:

'*1. Air navigation service providers shall, in addition to the certificates they are required to hold pursuant to Article 41 of Regulation (EU) No 2018/1139, hold an economic certificate. This economic certificate shall be issued upon application, when the applicant has demonstrated sufficient financial robustness and has obtained appropriate liability and insurance cover.*

The economic certificate referred to in this paragraph may be limited, suspended or revoked when the holder no longer complies with the requirements for issuing and maintaining such certificate.

2. An entity that holds an economic certificate referred to in paragraph 1 and a certificate referred to in Article 41 of Regulation (EU) No 2018/1139 shall be entitled to provide within the Union air navigation services for airspace users, under non-discriminatory conditions, without prejudice to Article 7(2).

3. The economic certificate referred to in paragraph 1 and the certificate referred to in Article 41 of Regulation (EU) No 2018/1139 may be subject to one or several conditions set out in Annex I. Such conditions shall be objectively justified, non-discriminatory, proportionate and transparent. The Commission shall be empowered to adopt delegated acts in accordance with Article 36 in order to amend the list set out in Annex I for the purposes of providing for an economic level playing field and resilience of service provision.

4. The national supervisory authorities of the Member State where the natural or legal person applying for the economic certificate has its principal place of business or, if that person has no principal place of business, where it has its place of residence or place of establishment, shall be responsible for the tasks set out in this Article in respect of the economic certificates. In the case of provision of air navigation services in an airspace falling under the responsibility of two or more Member States, the national supervisory authorities responsible shall be those specified in accordance with Article 5(4).

5. For the purpose of paragraph 1, the national supervisory authorities shall:

(a) receive and assess the applications made to them, and, where applicable, issue or renew economic certificates;

(b) perform oversight of holders of economic certificates.

6. The Commission shall adopt, in accordance with the examination procedure referred to in Article 37(3), implementing rules regarding detailed requirements on financial robustness, in

particular financial strength and financial resilience, as well as in respect of liability and insurance cover. In order to ensure the uniform implementation of and compliance with paragraphs (1), (4) and (5) of this Article, the Commission shall adopt implementing acts, in accordance with the examination procedure referred to in Article 37(3), laying down detailed provisions concerning the rules and procedures for certification and for conducting the investigations, inspections, audits and other monitoring activities necessary to ensure effective oversight by the national supervisory authority of the entities subject to this Regulation.'.

(47) Article 9 is renumbered Article 7 and contains the following changes:

(a) Paragraphs 1, 2 and 3 are reworded as follows:

'*1. Member States shall ensure the provision of air traffic services on an exclusive basis within specific airspace blocks in respect of the airspace under their responsibility. For this purpose, Member States shall individually or collectively, designate one or more air traffic service provider(s). The air traffic service providers shall fulfill the following conditions:*

(a) they shall hold a valid certificate or a valid declaration as referred to in Article 41 of Regulation (EU) 2018/1139 and an economic certificate in accordance with Article 6(1).

(b) they shall comply with the national security and defence requirements.

Each decision to designate an air traffic service provider shall be valid for a maximum of ten years. Member States may decide to renew the designation of an air traffic service provider.

2. The designation of the air traffic service providers shall not be subject to any condition requiring those providers to:

(a) be owned directly or through a majority holding by the designating Member State or its nationals;

(b) have their principal place of operation or registered office in the territory of the designating Member State;

(c) use only facilities in the designating Member State.

3. Member States shall specify the rights and obligations to be met by the air traffic service providers, designated individually or jointly. The obligations shall include conditions for making available relevant data enabling all aircraft movements to be identified in the airspace under their responsibility.';

(b) Paragraphs 4 and 5 are deleted.

(c) Paragraph 6 is renumbered paragraph 4.

(48) Article 10 is deleted.

(49) A new Article 8 is inserted, carrying the title '*Conditions regarding the provision of CNS, AIS, ADS, MET and terminal air traffic services*' and worded as follows:

'*1. Where this enables cost-efficiency gains to the benefit of airspace users, air traffic service providers may decide to procure CNS, AIS, ADS or MET services under market conditions.*

Where this enables cost-efficiency gains to the benefit of airspace users, Member States shall allow airport operators to procure terminal air traffic services for aerodrome control under market conditions.

In addition, where this enables cost-efficiency gains to the benefit of airspace users, Member States may allow airport operators or the national supervisory authority concerned to procure terminal air traffic services for approach control under market conditions.

2. Procurement of services under market conditions shall be on the basis of equal, non-discriminatory and transparent conditions in accordance with Union law including Treaty rules on competition. The tender procedures for the procurement of the services concerned shall be designed so as to enable the effective participation of competing providers in these procedures including through regular reopening of competition.

3. Member States shall take all necessary measures to ensure that the provision of en route *air traffic services is separated in terms of organisation from the provision of CNS, AIS, ADS, MET and terminal air traffic services and that the requirement concerning the separation of accounts referred to in Article 25(3) is respected.*

4. A provider of CNS, AIS, ADS, MET or terminal air traffic services may only be selected to provide services in a Member State, when:

(a) it is certified in accordance with Article 6(1) and 6(2);

(b) its principal place of business is located in the territory of a Member State;

(c) Member States or nationals of Member States own more than 50% of the service provider and effectively control it, whether directly or indirectly through one or more intermediate undertakings, except as provided for in an agreement with a third country to which the Union is a party; and

(d) the service provider fulfils national security and defence requirements.

5. Articles 14, 17 and 19 to 22 shall not apply to the terminal air traffic service providers designated as a result of a procurement procedure in accordance with the second and third subparagraphs of paragraph 1. Those terminal air traffic service providers shall provide data on the performance of air navigation services in the key performance areas of safety, the environment, capacity and cost-efficiency to national supervisory authority and the Agency acting as PRB for monitoring purposes.

6. National supervisory authorities shall ensure that procurement by air traffic service providers and airport operators as referred to in paragraph 1 complies with paragraph 2, and where necessary shall apply corrective measures. In the case of terminal air traffic services, they shall be responsible for approving tender specifications for terminal air traffic services, which shall include requirements on service quality. The national supervisory authorities shall refer to the national competition authority referred to in Article 11 of Council Regulation (EC) No 1/2003 matters relating to the application of competition rules.'.

(50) A new Article 9 is inserted, carrying the title '*Provision of common information services*' and worded as follows:

'*1. Where common information services are provided, the data disseminated shall present the integrity and quality necessary to enable the safe provision of services for the management of traffic of unmanned aircraft.*

2. The price for common information services shall be based on the fixed and variable costs of providing the service concerned and may, in addition, include a mark-up reflecting an appropriate risk-return trade-off.

The costs referred to in the first subparagraph shall be set out in an account separate from the accounts for any other activities of the operator concerned and shall be made publicly available.

3. The common information service provider shall set the price in accordance with paragraph 2, subject to assessment and approval by the national supervisory authority concerned.

4. As far as operations in specific volumes of airspace designated by the Member States for unmanned aircraft operations are concerned, relevant operational data shall be made available in real-time by air navigation service providers. Common information service providers shall use those data only for operational purposes of the services they provide. Access to relevant operational data shall be granted to common information service providers, on a non-discriminatory basis, without prejudice to security or defence policy interests.

Prices for access to such data shall be based on the marginal cost of making the data available.'.

(51) Article 11 is renumbered Article 10, and is changed as follows:

(a) Paragraph 1 is reworded as follows:

'*To improve the performance of air navigation services and network functions in the Single European Sky, a performance scheme for air navigation services and network functions shall apply in accordance with this Article and Articles 11 to 18.*';

(b) Paragraph 2 is replaced by the following:

'*The performance scheme shall be implemented over reference periods, which shall be a minimum of two years and a maximum of five years. The performance scheme shall include:*

(a) Union -wide performance targets in the key performance areas of the environment, capacity and cost-efficiency for each reference period;

(b) performance plans including binding performance targets in the key performance areas mentioned in point (a) for each reference period;

(c) periodic review, monitoring and benchmarking of performance in the key performance areas of safety, the environment, capacity and cost-efficiency.

The Commission may add additional key performance areas for performance target setting or monitoring purposes, where necessary to improve performance.';

(c) Paragraphs 3 to 6 and 8 are deleted;

(d) Paragraph 7 is renumbered paragraph 3, and reworded as follows:

'*Points (a), (b) and (c) of paragraph 2 shall be based on:*

(a) the collection, validation, examination, evaluation and dissemination of relevant data related to the performance of air navigation services and network functions from all relevant parties, including air navigation service providers, airspace users, airport operators, national supervisory authorities, national competent authorities, Member States, the Agency, the Network Manager and Eurocontrol;

(b) key performance indicators for target setting in the key performance areas of the environment, capacity and cost-efficiency;

(c) indicators for monitoring performance in the key performance areas of safety, the environment, capacity and cost-efficiency;

(d) a methodology for the development of performance plans and of performance targets for air navigation services, and methodology for the development of the performance plan and performance targets for the network functions;

(e) the assessment of the draft performance plans and targets for air navigation services and network functions;

(f) monitoring of performance plans, including appropriate alert mechanisms for revision of performance plans and targets and for the revision of Union-wide performance targets in the course of a reference period;

(g) benchmarking of air navigation service providers;

(h) incentive schemes including for financial disincentives applicable where an air traffic service provider does not comply with the relevant binding performance targets during the reference period or where it has not implemented the relevant common projects referred to in Article 35. Such financial disincentives shall in particular take account of the deterioration in the level of service quality provided by that provider, as a result of not complying with the performance targets or not implementing the common projects, and the impact thereof on the network;

(i) risk sharing mechanisms in respect of traffic and costs;

(j) timetables for target setting, assessment of performance plans and targets, monitoring and benchmarking;

(k) a methodology for the allocation of costs common to en route *and terminal air navigation services between the two categories of services;*

(l) mechanisms to address unforeseeable and significant events which have a material impact on the implementation of the performance and charging schemes.'.

(52) A new Article 11 is inserted, carrying the title '*Establishment of the Union-wide performance targets*' and worded as follows:

'*1. The Commission shall adopt the Union-wide performance targets for* en route *air navigation services and for terminal air navigation services in the key performance areas of environment, capacity and cost-efficiency for each reference period, in accordance with the advisory procedure referred to in Article 37(2) and with paragraphs 2 to 3 of this Article. In conjunction with the Union-wide performance targets, the Commission may define complementary baseline values, breakdown values or benchmark groups, for the purpose of enabling the assessment and approval of draft performance plans in accordance with the criteria referred to in Article 13(3).*

2. Union-wide performance targets referred to in paragraph 1 shall be defined on the basis of the following essential criteria:

(a) they shall drive gradual, continuous improvements in respect of the operational and economic performance of air navigation services;

(b) they shall be realistic and achievable during the reference period concerned, whilst fostering longer term structural and technological developments enabling the efficient, sustainable and resilient provision of air navigation services.

3. For the purposes of preparing its decisions on Union-wide performance targets, the Commission shall collect any necessary input from stakeholders. Upon request of the Commission, the Agency acting as PRB shall provide assistance to the Commission for the analysis and preparation of those decisions, by way of an opinion.'.

(53) Article 12 is deleted.

(54) Article 13 is renumbered Article 19 and reworded as follows:

'*1. Without prejudice to the possibility for Member States to finance the provision of air traffic services covered in this Article through public funds, charges for air navigation services shall be determined, imposed and enforced on airspace users.*

2. Charges shall be based on the costs of air traffic service providers in respect of services and functions delivered for the benefit of airspace users over fixed reference periods as defined in Article 10(2). Those costs may include a reasonable return on assets to contribute towards necessary capital improvements.

3. Charges shall encourage the safe, efficient, effective and sustainable provision of air navigation services with a view to achieving a high level of safety and cost-efficiency and meeting the performance targets and they shall stimulate integrated service provision, whilst reducing the environmental impact of aviation.

4. Revenues from charges imposed on airspace users may result in financial surpluses or losses for air traffic service providers due to the application of the incentive schemes referred to in point (h) of Article 10(3) and the risk sharing mechanisms referred to in point (i) of Article 10(3).

5. Revenues from charges imposed on airspace users in accordance with this Article shall not be used to finance services which are provided under market conditions in accordance with Article 8.

6. Financial data on determined costs, actual costs and revenues of designated air traffic service providers shall be reported to national supervisory authorities and the Agency acting as PRB and shall be made publicly available.'.

(55) Article 14 is renumbered Article 24. Its title is replaced by '*Review of compliance with the performance and charging schemes*' and its text is reworded as follows:

'*1. The Commission shall regularly review the compliance with Articles 10 to 17 and 19 to 22 and the implementing acts referred to in Articles 18 and 23, by the air traffic service providers and the Member States, as the case may be. The Commission shall act in consultation with the Agency acting as PRB and with national supervisory authorities.*

2. At the request of one or more Member States, of a national supervisory authority or of the Commission, the Agency acting as PRB shall carry out an investigation into any allegation of non-compliance as referred to in paragraph 1. Where it has indications of such non-compliance, the Agency acting as PRB may initiate an investigation on its own initiative. It shall conclude the investigation within four months of receipt of a request, after having heard the Member State, the national supervisory authority concerned and the designated air traffic

service provider concerned. Without prejudice to Article 41(1), the Agency acting as PRB shall share the results of the investigation with the Member States concerned, the air traffic service providers concerned and the Commission.

3. The Commission may issue an opinion on whether Articles 10 to 17 and 19 to 22 and the implementing acts referred to in Articles 18 and 23 have been complied with by Member States and/or air traffic service providers and shall notify this opinion to the Member State or Member States and the air traffic service provider concerned.'.

(56) Article 15 is renumbered Article 35 (in Chapter V of the amended proposal) and is reworded as follows:

'*1. The Commission may set up common projects for implementing the essential operational changes identified in the European ATM Master Plan having a network-wide impact.*

2. The Commission may also establish governance mechanisms for common projects and their implementation.

3. Common projects may be eligible for Union funding. To this end, and without prejudice to Member States' competence to decide on the use of their financial resources, the Commission shall carry out an independent cost-benefit analysis and appropriate consultations with Member States and with relevant stakeholders in accordance with Article 10, exploring all appropriate means for financing the implementation thereof.

4. The Commission shall establish the common projects and governance mechanisms referred to in paragraphs 1 and 2 through implementing acts adopted in accordance with the examination procedure referred to in Article 37(3).'.

(57) Article 16 is deleted.

(58) Article 17 is replaced by Articles 26 and 27 (in Chapter IV of the amended proposal), which read as follows:

'*Article 26*

Network functions

1. The air traffic management network functions shall ensure the sustainable and efficient use of the airspace and of scarce resources. They shall also ensure that airspace users can operate environmentally optimal trajectories, while allowing maximum access to airspace and air navigation services. Those network functions, enumerated in paragraphs 2 and 3, shall support the achievement of the Union-wide performance targets and shall be based on operational requirements.

2. The network functions referred to in paragraph 1 include the following:

(a) the design and management of the European airspace structures;

(b) air traffic flow management;

(c) the coordination of scarce resources within aviation frequency bands used by general air traffic, in particular radio frequencies as well as coordination of radar transponder codes.

3. The network functions referred to in paragraph 1 also include the following:

(a) optimisation of airspace design for the network and facilitation of delegation of air traffic services provision through co-operation with the air traffic service providers and Member State authorities;

(b) management of the delivery of air traffic control capacity in the network as set out in the binding Network Operations Plan (NOP);

(c) function for coordination and support in case of network crisis.

(d) air traffic flow and capacity management;

(e) the management of the planning, monitoring and coordination of implementation activities of the deployment of infrastructure in the European ATM network, in accordance with the European ATM Master Plan, taking into account operational needs and associated operational procedures;

(f) the monitoring of the functioning of the European ATM network infrastructure.

4. The functions listed in paragraphs 2 and 3 shall not involve the adoption of binding measures of a general scope or the exercise of political discretion. They shall be performed in coordination with military authorities in accordance with agreed procedures concerning the flexible use of airspace.

5. The Commission shall be empowered to adopt delegated acts in accordance with Article 36 to amend this Regulation in order to add functions to the ones listed in paragraphs 2 and 3, where necessary for the functioning and performance of the network.

Article 27

The Network Manager

1. In order to achieve the objectives referred to in Article 26, the Commission, supported by the Agency where relevant, shall ensure that the Network Manager contributes to the execution of the network functions set out in Article 26, by carrying out the tasks referred to in paragraph 4.

2. The Commission may appoint an impartial and competent body to carry out the tasks of the Network Manager. To this end, the Commission shall adopt an implementing act in accordance with the examination procedure referred to in Article 37(3). This appointment Decision shall include the terms and conditions of the appointment, including the financing of the Network Manager.

3. The tasks of the Network Manager shall be executed in an independent, impartial and cost efficient manner. They shall be subject to appropriate governance, which shall recognise separate accountabilities for service provision and regulation where the competent body designated as the Network Manager also has regulatory functions. In the execution of its tasks, the Network Manager shall take into consideration the needs of the whole ATM network and shall fully involve the airspace users, air navigation service providers, aerodrome operators and the military.

4. The Network Manager shall contribute to the execution of the network functions through support measures aimed at safe and efficient planning and operations of the network under normal and crisis conditions and through measures aimed at the continuous improvement of network operations in the Single European Sky and the overall performance of the network, especially regarding the implementation of the performance scheme. The action taken by the Network Manager shall take account of the need to fully integrate the airports in the network.

5. The Network Manager shall cooperate closely with the Agency acting as PRB in order to ensure that the performance targets referred to in Article 10 are adequately reflected in the capacity to be delivered by individual air navigation service providers and agreed between the Network Manager and those air navigation service providers in the Network Operations Plan.

6. The Network Manager shall:

(a) decide on individual measures to implement the network functions and to support the effective implementation of the binding Network Operations Plan and the achievement of the binding performance targets;

(b) advise the Commission and provide relevant information to the Agency acting as PRB on the deployment of the ATM network infrastructure in accordance with the European ATM Master Plan, in particular to identify investments necessary for the network.

7. The Network Manager shall take decisions through a cooperative decision-making process. Parties to the cooperative decision-making process shall act to the maximum extent possible with a view to improving the functioning and performance of the network. The cooperative decision-making process shall promote the interest of the network.

8. By way of implementing acts adopted in accordance with the examination procedure referred to in Article 37(3), the Commission shall establish detailed rules for the execution of the network functions, the tasks of the Network Manager, governance mechanisms including decision-making processes and crisis management.

9. Aspects of design of airspace structures other than those referred to in paragraphs 2 and 3 of Article 26 shall be addressed by Member States. In this regard, Member States shall take into account air traffic demands, seasonality and complexity of air traffic and of performance plans. Before deciding on those aspects, they shall consult airspace users concerned or groups representing such airspace users and military authorities as appropriate.'.

(59) Article 18 is deleted.

(60) Article 19 is renumbered Article 29 (in Chapter IV of the amended proposal). The first sentence is replaced by:

'*The air traffic service providers shall establish consultation mechanisms to consult the relevant airspace users and aerodrome operators on all major issues related to services provided, including relevant changes to airspace configurations, or strategic investments which have a relevant impact on air traffic management and air navigation service provision and/or charges.*';

in the fourth sentence, the reference to '*Article 27(3)*' is replaced by '*Article 37(3)*'.

(61) Article 20 is renumbered Article 30 (in Chapter IV of the amended proposal) and is reworded as follows;

'*Member States shall, within the context of the common transport policy, take the necessary steps to ensure that written agreements between the competent civil and military authorities or equivalent legal arrangements are established or renewed in respect of the management of specific airspace blocks and notify the Commission thereof.*'.

(62) Article 21 is renumbered Article 25, its title is replaced by '*Transparency of accounts of air navigation service providers*' and its text is reworded as follows:

‘*1. Air navigation service providers, independently of their system of ownership or legal structures, shall annually draw up and publish their financial accounts. These accounts shall comply with the international accounting standards adopted by the Union. Where, owing to the legal status of the air navigation service provider, full compliance with the international accounting standards is not possible, the provider shall achieve such compliance to the maximum possible extent. Air navigation service providers shall publish an annual report and regularly undergo an independent audit for the accounts referred to in this paragraph.*

2. National supervisory authorities and the Agency acting as PRB shall have the right to access the accounts of the air navigation service providers under their supervision. Member States may decide to grant access to these accounts to other supervisory authorities.

3. Air navigation service providers shall, in their internal accounting, keep separate accounts for each air navigation service as they would be required to do if these services were carried out by separate undertakings with a view to avoiding discrimination, cross-subsidisation and distortion of competition. An air navigation service provider shall also keep separate accounts for each activity where:

(a) it provides air navigation services procured in accordance with Article 8(1) and air navigation services not covered by that provision;

(b) it provides air navigation services and carries out other activities, of whatever kind, including common information services;

(c) it provides air navigation services in the Union and in third countries.

The determined costs, actual costs and revenues deriving from air navigation services shall be broken down into staff costs, operating costs other than staff costs, depreciation costs, cost of capital, costs incurred for fees and charges paid to Agency acting as PRB, and exceptional costs and they shall be made publicly available, subject to the protection of confidential information.

4. The financial data on costs and revenues reported in accordance with Article 19(6) and other information relevant for the calculation of unit rates shall be audited or verified by the national supervisory authority or an entity independent of the air navigation service provider concerned and approved by the national supervisory authority. The conclusions of the audit shall be made publicly available.’.

(63) Article 22 is renumbered Article 31 (in Chapter IV of the amended proposal). The title is replaced by ‘*Availability of and access to operational data for general air traffic*’ and the text is reworded as follows:

‘*1. With regard to general air traffic, relevant operational data shall be made available in real-time, on a non-discriminatory basis and without prejudice to security or defence policy interests, by all air navigation service providers, airspace users, airports, and the Network Manager, including on cross-border basis and on a Union-wide basis. Such availability shall be to the benefit of certified or declared air traffic service providers, entities having a proven interest in considering the provision of air navigation services, airspace users and airports as well as the Network Manager. The data shall be used only for operational purposes.*

2. Prices for the service referred to in paragraph 1 shall be based on the marginal cost of making the data available.

3. Access to relevant operational data as referred to in paragraph 1 shall be granted to the authorities in charge of safety oversight, performance oversight and network oversight, including the Agency.

4. The Commission may lay down the detailed requirements for the making available of and the access to data in accordance with paragraphs 1 and 3 and the methodology to set the prices as referred to in paragraph 2. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 37(3).'.

(64) A new Article 12 is inserted, carrying the title '*Classification of* en route *and terminal air* navigation *services*' and worded as follows:

'*1. Before the start of each reference period, each Member State shall notify to the Commission which air navigation services to be provided during that period in the airspace under their responsibility it intends to classify as* en route *air navigation services and as terminal air navigation services respectively. At the same time, each Member State shall notify the Commission of the designated air traffic service providers of those respective services.*

2. In due time before the start of the relevant reference period, the Commission, shall adopt implementing decisions addressed to each Member State as to whether the intended classification of the services concerned complies with the criteria set out in points (28) and (55) of Article 2. Upon request of the Commission, the Agency acting as PRB shall provide assistance to the Commission for the analysis and preparation of those decisions, by way of an opinion.

3. Where a decision adopted under paragraph 2 finds that the intended classification does not comply with the criteria set out in points (28) and (55) of Article 2, the Member State concerned shall, having regard to that decision, submit a new notification whose terms comply with those criteria. The Commission shall take a decision on this notification in accordance with paragraph 2.

4. The designated air traffic service providers concerned shall base their draft performance plans for en route *and terminal air navigation services on the classifications the Commission has found to be in compliance with the criteria set out in points (28) and (55) of Article 2. The Agency acting as PRB shall base itself on those same classifications when assessing the allocation of costs between* en route *and terminal air navigation services under Article 13(3).*'.

(65) A new Article 13 is inserted, carrying the title '*Performance plans and performance targets for* en route *air navigation services of designated air traffic service providers*' and worded as follows:

'*1. The designated air traffic service providers for* en route *air traffic services shall, for each reference period, adopt draft performance plans in respect of all the* en route *air navigation services which they provide and, where applicable, procure from other providers.*

The draft performance plans shall be adopted after the setting of Union-wide performance targets and before the start of the reference period concerned. They shall contain performance targets for en route *air navigation services in the key performance areas of the environment, capacity and cost-efficiency, consistent with the Union-wide performance targets. Those draft performance plans shall take account of the European ATM Master Plan. The draft performance plans shall be made publicly available.*

2. The draft performance plans for en route *air navigation services referred to in paragraph 1 shall include relevant information provided by the Network Manager. Before adopting those draft plans, designated air traffic service providers shall consult airspace users' representatives and, where relevant, military authorities, airport operators and airport coordinators. The designated air traffic service providers shall also submit those plans to the national competent authority responsible for their certification, which shall verify the compliance with Regulation (EU) 2018/1139 and the delegated and implementing acts adopted on the basis thereof.*

3. Draft performance plans for en route *air navigation services shall contain performance targets for* en route *air navigation services that are consistent with the respective Union-wide performance targets in all key performance areas and fulfil the additional conditions laid down in the third subparagraph.*

Consistency of performance targets for en route *air navigation service with Union-wide performance targets shall be established according to the following criteria:*

(a) where breakdown values have been established in conjunction with Union-wide performance targets, comparison of the performance targets contained in the draft performance plan with those breakdown values;

(b) evaluation of performance improvements over time, for the reference period covered by the performance plan, and additionally for the overall period comprising both the preceding reference period and the reference period covered by the performance plan;

(c) comparison of the planned level of performance of the air traffic service provider concerned with other air traffic service providers being part of the same benchmark group.

In addition, the draft performance plan must comply with the following conditions:

(a) key assumptions applied as a basis for target setting and measures intended to achieve the targets during the reference period, including baseline values, traffic forecasts and economic assumptions used, must be accurate, adequate and coherent;

(b) the draft performance plan must be complete in terms of data and supporting material;

(c) cost bases for charges must comply with Article 20.

4. The allocation of costs between en route *and terminal air navigation services shall be assessed by the Agency acting as PRB on the basis of the methodology referred to in Article 10(3)(k) and the classification of the different services as assessed by the Commission pursuant to Article 12.*

5. The draft performance plans for en route *air navigation services referred to in paragraph 1, including where relevant the allocation of costs between* en route *and terminal air navigation services, shall be submitted to the Agency acting as PRB for assessment and approval.*

6. In the case of a designated air traffic service provider providing both en route *air navigation services and terminal air navigation services, the Agency acting as PRB shall first assess the allocation of costs between the respective services in accordance with paragraph 4.*

Where the Agency acting as PRB finds that the allocation of costs does not comply with the methodology or with the classification referred to in paragraph 4, the designated air traffic service provider concerned shall present a new draft performance plan complying with that methodology and with that classification.

Where the Agency acting as PRB finds that the allocation of costs complies with that methodology and with that classification, it shall take a decision to that effect, notifying the designated air traffic service provider and national supervisory authority concerned. The national supervisory authority shall be bound by the conclusions of that decision in respect of the allocation of costs for the purposes of the assessment of the draft performance plan for terminal air navigation services referred to in Article 14.

7. The Agency acting as PRB shall assess the performance targets for en route *air navigation services and the performance plans according to the criteria and conditions set out in paragraph 3. Where paragraph 6 applies, this assessment shall take place after a decision on the allocation of costs has been taken in accordance with the fourth subparagraph of paragraph 6.*

Where the Agency acting as PRB finds that the draft performance plan meets those criteria and conditions, it shall approve it.

Where the Agency acting as PRB finds that one or several performance targets for en route *air navigation services are not consistent with the Union-wide performance targets or the performance plan does not meet the additional conditions set out in paragraph 3, it shall deny the approval.*

8. Where the Agency acting as PRB has denied approval of a draft performance plan in accordance with paragraph 7, a revised draft performance plan shall be presented by the designated air traffic service provider concerned, including where necessary revised targets.

9. The Agency acting as PRB shall assess the revised draft performance plan referred to in paragraph 8 in accordance with the criteria and conditions set out in paragraph 3. Where a revised draft performance plan meets those criteria and conditions, the Agency acting as PRB shall approve it.

Where a revised draft performance plan does not meet those criteria and conditions, the Agency acting as PRB shall deny its approval and shall require the designated air traffic service provider to present a final draft performance plan.

Where the revised draft performance plan submitted in accordance with paragraph 8 is denied because it contains performance targets for en route *air navigation services that are not consistent with the Union-wide performance targets, the Agency acting as PRB shall establish performance targets in consistency with the Union-wide performance targets for the designated air traffic service provider concerned, taking into account the findings made in the decision referred to in paragraph 7. The final draft performance plan to be presented by the designated air traffic service provider concerned shall include the performance targets thus established by the Agency acting as PRB, as well as the measures to achieve those targets.*

Where approval of the revised draft performance plan submitted in accordance with paragraph 8 is denied only because it does not comply with the conditions set out in the third subparagraph of paragraph 3, the final draft performance plan to be presented by the designated air traffic service provider concerned shall include the performance targets

contained in the draft performance plan and found to be consistent with the Union-wide performance targets by the Agency acting as PRB, and shall contain the amendments necessary in view of the conditions the Agency acting as PRB has found not being met.

Where approval of the revised draft performance plan submitted in accordance with paragraph 8 is denied because it contains performance targets for en route *air navigation services that are not consistent with the Union-wide performance targets and because, in addition, it does not comply with the conditions set out in the third subparagraph of paragraph 3, the final draft performance plan to be presented by the designated air traffic service provider concerned shall include the performance targets established by the Agency acting as PRB in accordance with the third subparagraph and the measures to achieve those targets and shall and shall contain the amendments necessary in view of the conditions the Agency acting as PRB has found not being met.*

10. Draft performance plans approved by the Agency acting as PRB shall be adopted by the designated air traffic service providers concerned as definitive plans, and shall be made publicly available.

11. The Agency acting as PRB shall issue regular reports, within the time limits referred to in the implementing acts to be adopted in accordance with Article 18, on the monitoring of performance of en route *air navigation services and network functions, including regular assessments of the achievement of the* en route *Union-wide performance targets and of performance targets for* en route *air navigation services for air traffic service providers and making the results of those assessments publicly available.*

The designated air traffic service provider shall provide the information and data necessary for the monitoring of the performance of air navigation services. This shall include information and data related to actual costs and revenues. Where performance targets are not reached or the performance plan is not correctly implemented, the Agency acting as PRB shall issue decisions requiring corrective measures to be implemented by the air traffic service providers. These corrective measures may include, where objectively necessary, a requirement for an air traffic service provider to delegate the provision of the relevant services to another air traffic service provider. Where the performance targets continue to be missed, or where the performance plan continues to be incorrectly implemented or where corrective measures imposed are not or not properly applied, the Agency acting as PRB shall conduct an investigation and provide an opinion to the Commission in accordance with Article 24(2). The Commission may take action in accordance with Article 24(3).'.

(66) A new Article 14 is inserted, carrying the title '*Performance plans and performance targets for terminal air navigation services of designated air traffic service providers*' and worded as follows:

'*1. The designated air traffic service providers for terminal air traffic services shall, for each reference period, adopt draft performance plans in respect of all the terminal air navigation services which they provide and, where applicable, procure from other providers.*

The draft performance plans shall be adopted after the setting of Union-wide performance targets and before the start of the reference period concerned. They shall contain performance targets for terminal air navigation services in the key performance areas of environment, capacity and cost-efficiency, consistent with the Union-wide performance targets. Those draft performance plans shall take account of the European ATM Master Plan. The draft performance plans shall be made publicly available.

2. The draft performance plans for terminal air navigation services referred to in paragraph 1 shall include relevant information provided by the Network Manager. Before adopting those draft plans, designated air traffic service providers shall consult airspace users' representatives and, where relevant, military authorities, airport operators and airport coordinators. The designated air traffic service providers shall also submit those plans to the national competent authority responsible for their certification, which shall verify the compliance with Regulation (EU) 2018/1139 and the delegated and implementing acts adopted on the basis thereof.

3. Draft performance plans for terminal air navigation services shall contain performance targets for terminal air navigation services that are consistent with the respective Union-wide performance targets in all key performance areas and fulfil the additional conditions laid down in the third subparagraph.

Consistency of performance targets for terminal air navigation service with Union-wide performance targets shall be established according to the following criteria:

(a) where breakdown values have been established in conjunction with Union-wide performance targets, comparison of the performance targets contained in the draft performance plan with those breakdown values;

(b) evaluation of performance improvements over time, for the reference period covered by the performance plan, and additionally for the overall period comprising both the preceding reference period and the reference period covered by the performance plan;

(c) comparison of the planned level of performance of the air traffic service provider concerned with other air traffic service providers being part of the same benchmark group.

In addition, the draft performance plan must comply with the following conditions:

(a) key assumptions applied as a basis for target setting and measures intended to achieve the targets during the reference period, including baseline values, traffic forecasts and economic assumptions used, must be accurate, adequate and coherent;

(b) the draft performance plan must be complete in terms of data and supporting material;

(c) cost bases for charges must comply with Article 20.

4. The draft performance plans for terminal air navigation services referred to in paragraph 1, shall be submitted to the national supervisory authority for assessment and approval.

5. In the case of a designated air traffic service provider providing both en route *air navigation services and terminal air navigation services, the draft performance plan for terminal air navigation services to be submitted to the national supervisory authority shall be the plan subject to a positive decision on the allocation of costs taken by the Agency acting as PRB in accordance with the third subparagraph of Article 13(6).*

6. The national supervisory authority shall assess the performance targets for terminal air navigation services and the performance plans according to the criteria and conditions set out in paragraph 3. Where paragraph 5 applies, the national supervisory authority shall base its assessment on the conclusions of the decision taken by the Agency acting as PRB in respect of the allocation of costs.

Where the national supervisory authority finds that the draft performance plan meets those criteria and conditions, it shall approve it.

Where the national supervisory authority finds that one or several performance targets for terminal air navigation services are not consistent with the Union-wide performance targets or the performance plan does not meet the additional conditions set out in paragraph 3, it shall deny the approval.

7. Where the national supervisory authority has denied approval of a draft performance plan in accordance with paragraph 6, a revised draft performance plan shall be presented by the designated air traffic service provider concerned, including where necessary revised targets.

8. The national supervisory authority shall assess the revised draft performance plan referred to in paragraph 7 in accordance with the criteria and conditions set out in paragraph 3. Where a revised draft performance plan meets those criteria and conditions, the national supervisory authority shall approve it.

Where a revised draft performance plan does not meet those criteria and conditions, the national supervisory authority shall deny its approval and shall require the designated air traffic service provider to present a final draft performance plan.

Where the revised draft performance plan submitted in accordance with paragraph 7 is denied because it contains performance targets for terminal air navigation services that are not consistent with the Union-wide performance targets, the national supervisory authority shall establish performance targets in consistency with the Union-wide performance targets for the designated air traffic service provider concerned, taking into account the findings made in the decision referred to in paragraph 6. The final draft performance plan to be presented by the designated air traffic service provider concerned shall include the performance targets thus established by the national supervisory authority as well as the measures to achieve those targets.

Where approval of the revised draft performance plan submitted in accordance with paragraph 7 is denied only because it does not comply with the conditions set out in the third subparagraph of paragraph 3, the final draft performance plan to be presented by the designated air traffic service provider concerned shall include the performance targets contained in the draft performance plan and found to be consistent with the Union-wide performance targets by the national supervisory authority, and shall contain the amendments necessary in view of the conditions the national supervisory authority has found not being met.

Where approval of the revised draft performance plan submitted in accordance with paragraph 7 is denied because it contains performance targets for terminal air navigation services that are not consistent with the Union-wide performance targets and because, in addition, it does not comply with the conditions set out in the third subparagraph of paragraph 3, the final draft performance plan to be presented by the designated air traffic service provider concerned shall include the performance targets established by the national supervisory authority in accordance with the third subparagraph and the measures to achieve those targets and shall contain the amendments necessary in view of the conditions the national supervisory authority has found not being met.

9. Draft performance plans approved by the national supervisory authority shall be adopted by the designated air traffic service providers concerned as definitive plans, and shall be made publicly available.

10. The national supervisory authority concerned shall issue regular reports on the monitoring of performance of terminal air navigation services, including regular assessments of the achievement of the performance targets for terminal air navigation services for air traffic service providers and making the results of those assessments publicly available.

The designated air traffic service provider shall provide the information and data necessary for the monitoring of the performance of air navigation services. This shall include information and data related to actual costs and revenues.

Where performance targets are not reached or the performance plan is not correctly implemented, the national supervisory authority shall issue decisions requiring corrective measures to be implemented by the air traffic service providers. These corrective measures may include, where objectively necessary, a requirement for an air traffic service provider to delegate the provision of the relevant services to another air traffic service provider. Where the performance targets continue to be missed, or where the performance plan continues to be incorrectly implemented, or where corrective measures imposed are not or not properly applied, the national supervisory authority shall request the Agency acting as PRB to conduct an investigation in accordance with Article 24(2), and the Commission may take action in accordance with Article 24(3).

11. Member States shall ensure that decisions taken by the national supervisory authority pursuant to this Article are subject to judicial review.

12. Where the Agency acting as PRB carries out the tasks of a national supervisory authority in accordance with Article 3(8), the draft performance plans for terminal air navigation services shall be submitted to the Agency acting as PRB together with the draft performance plans for en route *air navigation services. Where the Agency has taken a decision in respect of the allocation of costs as referred to in the third subparagraph of Article 13(6), this decision shall be binding on it for the purposes of the assessment of the draft performance plans for terminal air navigation services.*'.

(67) A new Article 15 is inserted, carrying the title '*Role of the Agency acting as PRB as regards the monitoring of Union-wide performance targets for terminal air navigation services*' and worded as follows:

'*1. The Agency acting as PRB shall on a regular basis establish a Union-wide overview of the performance of terminal air navigation services and of how it relates to Union-wide performance targets.*

2. For the purpose of the preparation of the overview referred to in point 1, the national supervisory authorities shall notify their reports referred to in Article 14(10) to the Agency acting as PRB and shall provide any other information the Agency acting as PRB may request for those purposes.'.

(68) A new Article 16 is inserted, carrying the title '*Network Performance Plan*' and worded as follows:

'*1. The Network Manager shall, for each reference period, draw up a draft Network Performance Plan in respect of all the network functions which it delivers.*

The draft Network Performance Plan shall be drawn up after the setting of Union-wide performance targets and before the start of the reference period concerned. It shall contain performance targets in the key performance areas of the environment, capacity and cost-efficiency.

2. The draft Network Performance Plan shall be submitted to the Agency acting as PRB and to the Commission.

The Agency acting as PRB shall, upon request from the Commission, deliver an opinion to the Commission on the draft Network Performance Plan based on the following essential criteria:

(a) consideration of performance improvements over time, for the reference period covered by the performance plan, and additionally for the timeframe comprising both the preceding reference period and the reference period covered by the performance plan;

(b) completeness of the draft Network Performance Plan in terms of data and supporting materials.

Where the Commission finds that the draft Network Performance Plan is complete and shows adequate performance improvements, it shall adopt the draft Network Performance Plan as a definitive plan. Otherwise, the Commission may request the Network Manager to submit a revised draft Network Performance Plan.'.

(69) A new Article 17 is inserted, carrying the title '*Revision of performance targets and performance plans during a reference period*' and worded as follows:

'*1. Where, during a reference period, Union-wide performance targets are no longer adequate, in light of significantly changed circumstances, and where the revision of targets is necessary and proportionate, the Commission shall revise those Union-wide performance targets. Article 11 shall apply to such decision. Subsequent to such revision, designated air traffic service providers shall adopt new draft performance plans, to which Articles 13 and 14 shall apply. The Network Manager shall draw up a new draft Network Performance Plan, to which Article 16 shall apply.*

2. The decision on the revised Union-wide performance targets referred to in paragraph 1 shall include transitional provisions for the time period until the definitive performance plans adopted pursuant to Article 13(6) and Article 14(6) become applicable.

3. Designated air traffic service providers may request permission from the Agency acting as PRB as regards en route *air navigation services, or from national supervisory authority concerned as regards terminal air navigation services, to revise one or several performance targets during a reference period. Such a request can be made where alert thresholds are reached, or where the designated air traffic service providers demonstrate that the initial data, assumptions and rationales underpinning the performance targets are to a significant and lasting extent no longer accurate due to circumstances that were unforeseeable at the time of the adoption of the performance plan.*

4. The Agency acting as PRB as regards en route *air navigation services, or the national supervisory authority concerned as regards terminal air navigation services, shall authorise the designated air traffic service provider concerned to proceed with the intended revision only if it is necessary and proportionate, and where the revised performance targets ensure that consistency with the Union-wide performance targets is maintained. Where the revision*

has been authorised, designated air traffic service providers shall adopt new draft performance plans, in accordance with the procedures set out in Articles 13 and 14.'.

(70) A new Article 18 is inserted, carrying the title '*Implementation of the performance scheme*' and worded as follows:

'*For the implementation of the performance scheme, the Commission shall adopt detailed requirements and procedures in respect of Articles 10(3), 11, 12, 13, 14, 15, 16 as well as 17, in particular as regards the development of draft performance plans, the setting of performance targets, the criteria and conditions for their assessment, the methodology for allocation of costs between* en route *and terminal air navigation services, the monitoring of performance and issuance of corrective measures, and the timetables for all procedures. Those requirements and procedures shall be set out in an implementing act adopted in accordance with the advisory procedure referred to in Article 37(2).*'.

(71) A new Article 20 is inserted, carrying the title '*Cost bases for charges*' and worded was follows:

'*1. The cost bases for charges for* en route *air navigation services and charges for terminal air navigation services shall consist of the determined costs related to the provision of those services in the* en route *charging zone and terminal charging zone concerned, as established in the performance plans adopted in accordance with Articles 13 and 14.*

2. The determined costs referred to in paragraph 1 shall include the costs of relevant facilities and services, appropriate amounts for interest on capital investment and depreciation of assets, as well as the costs of maintenance, operation, management and administration.

3. The determined costs referred to in paragraph 1 shall also include the following costs:

(a) costs incurred by the air traffic service providers for fees and charges paid to the Agency acting as PRB;

(b) costs or parts thereof incurred by the air traffic service providers, in relation to their oversight and certification by national supervisory authorities, unless other financial resources are used by Member States to cover such costs;

(c) costs incurred by the air traffic service providers in relation to the provision of air navigation services and network functions, including the tasks entrusted to the Network Manager, unless other financial resources are used by Member States to cover such costs.

4. Determined costs shall not include the costs of penalties imposed by Member States referred to in Article 42 nor the costs of any corrective measures referred to in Article 13(11) and Article 14(10).

5. Cross-subsidy shall not be allowed between en route *air navigation services and terminal air navigation services. Costs that pertain to both* en route *air navigation services and terminal air navigation services shall be allocated in a proportional way between* en route *air navigation services and terminal air navigation services on the basis of a transparent methodology. Cross-subsidy shall be allowed between different air navigation services in either one of those two categories only when justified for objective reasons, subject to transparent identification in accordance with Article 25(3).*

6. Designated air traffic service providers shall provide details of their cost base to the Agency acting as PRB, the national supervisory authorities, and the Commission. To this end, costs shall be broken down in line with the separation of accounts referred to in Article 25(3), and by distinguishing staff costs, operating costs other than staff costs, depreciation costs, cost of capital, costs incurred for fees and charges paid to the Agency acting as PRB, and exceptional costs.'.

(72) A new Article 21 is inserted, carrying the title '*Setting of unit rates*' and worded as follows:

'*1. Unit rates shall be set per calendar year and for each charging zone, on the basis of the determined costs and the traffic forecasts established in the performance plans as well as applicable adjustments deriving from previous years and other revenues.*

2. Unit rates shall be set by the national supervisory authorities, after verification by the Agency acting as PRB that they comply with Article 19, Article 20 and with this Article. Where the Agency acting as PRB finds that a unit rate does not fulfill those requirements, the unit rate shall be reviewed accordingly by the national supervisory authority concerned. Where a unit rate continues to not fulfill those requirements, the Agency acting as PRB shall conduct an investigation and provide an opinion to the Commission in accordance with Article 24(2), and the Commission may take action in accordance with Article 24(3).

For charging purposes, and when congestion causes significant network problems including deterioration of environmental performance, the Commission may define, by way of an Implementing Regulation adopted in accordance with the examination procedure referred to in Article 37(3), a common unit rate for en route *air navigation services across the Single European Sky airspace, and detailed rules and procedures for its application. The common unit rate referred to in the first subparagraph shall be calculated on the basis of a weighted average of the different unit rates of the air navigation service providers concerned. The proceeds of the common unit rate shall be reallocated so as to achieve revenue neutrality for those air traffic service providers concerned.*'.

(73) A new Article 22 is inserted, carrying the title '*Establishment of charges*' and worded as follows:

'*1. Charges shall be levied on airspace users for the provision of air navigation services, under non-discriminatory conditions, taking into account the relative productive capacities of the different aircraft types concerned. When imposing charges on different airspace users for the use of the same service, no distinction shall be made in relation to the nationality or category of the user.*

2. The charge for en route *air navigation services for a given flight in a given* en route *charging zone shall be calculated on the basis of the unit rate established for that* en route *charging zone and the* en route *service units for that flight. The charge shall be made out of one or more variable components, each based on objective factors.*

3. The charge for terminal air navigation services for a given flight in a given terminal charging zone shall be calculated on the basis of the unit rate established for that terminal charging zone and the terminal service units for that flight. For the purpose of calculating the charge for terminal air navigation services, the approach and departure of a flight shall count as a single flight. The charge shall be made out of one or more variable components, each based on objective factors.

4. Exemption of certain airspace users from air navigation charges, especially light aircraft and State aircraft, may be permitted, provided that the cost of such exemption is covered by other resources and is not passed on to other airspace users.

5. Charges shall be modulated to encourage air navigation service providers, airports and airspace users to support improvements in environmental performance, or service quality such as increased use of sustainable alternative fuels, increased capacity, reduced delays and sustainable development, while maintaining an optimum safety level, in particular for implementing the European ATM Master Plan. The modulation shall consist of financial advantages or disadvantages and shall be revenue neutral for air traffic service providers.'.

(74) A new Article 23 is inserted, carrying the title '*Implementation of the charging scheme*' and worded as follows:

'*For the implementation of the charging scheme, the Commission shall adopt detailed requirements and procedures in respect of Articles 19, 20, 21 and 22 in particular regarding the cost bases and determined costs, the setting of unit rates, the incentives schemes and risk sharing mechanisms and the modulation of charges. Those requirements and procedures shall be set out in an implementing act adopted in accordance with the advisory procedure referred to in Article 37(2).*'.

New Chapter IV: Network Management

(75) A new Chapter IV is introduced, titled '*Network Management*'.

(76) The Chapter is composed of Articles 26 to 31.

(77) For Articles 26, 27, and 29 to 31, reference is made to points (58), (60), (61) and (63) above.

(78) New Article 28 carries the title '*Transparency of accounts of the Network Manager*' and its text is worded as follows:

'*1. The Network Manager shall draw up, submit to and publish its financial accounts. Those accounts shall comply with the international accounting standards adopted by the Union. Where, due to the legal status of the Network Manager, full compliance with the international accounting standards is not possible, the Network Manager shall achieve such compliance to the maximum possible extent.*

2. The Network Manager shall publish an annual report and regularly undergo an independent audit.'.

Chapter V: Airspace, Interoperability and Technological Innovation

(79) Chapter IV is renumbered Chapter V and its title reworded to read '*Airspace, Interoperability and Technological Innovation*'.

(80) Article 23 is renumbered Article 32 and reworded as follows:

'*Without prejudice to the publication by Member States of aeronautical information and in a manner consistent with that publication, the Network Manager, in cooperation with the Commission, shall establish a Union-wide aeronautical information infrastructure to further the availability of electronic aeronautical information of high quality, presented in an easily accessible way and serving the requirements of all relevant users in terms of data quality and timeliness. The aeronautical information thus made available shall only be the information*

that complies with the essential requirements set out in point 2.1 of Annex VIII of Regulation (EU) 2018/1139.'.

(81) Article 24 is deleted.

(82) A new Article 33 is added, carrying the title '*Flexible use of airspace*' and worded as follows:

'*1. Taking into account the organisation of military aspects under their responsibility, Member States shall ensure the application within the single European sky of the concept of the flexible use of airspace as described by ICAO and as developed by Eurocontrol, in order to facilitate airspace management and air traffic management in the context of the common transport policy and in consistency with the European ATM Master Plan.*

2. Member States shall report annually to the Commission on the application, in the context of the common transport policy, of the concept of the flexible use of airspace in respect of the airspace under their responsibility.

3. Where, in particular following the reports submitted by Member States, it becomes necessary to reinforce and harmonise the application of the concept of the flexible use of airspace within the single European sky, the Commission shall adopt measures within the context of the common transport policy. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 37(3).'.

(83) A new Article 34 is added, carrying the title '*SESAR coordination*' and worded as follows:

'*The entities in charge of tasks established in Union law in the areas of coordination of the SESAR definition phase, the SESAR development phase and the SESAR deployment phase, as the case may be, shall cooperate to ensure effective coordination between those three phases so as to achieve a seamless and timely transition between them.*

All relevant civil and military stakeholders shall be involved to the widest possible extent.'.

<u>Chapter VI: Final provisions</u>

(84) Chapter V is renumbered Chapter VI.

(85) Article 25 is deleted.

(86) Article 26 is renumbered Article 36, and changed as follows:

(a) Paragraph 2 is reworded as follows:

'*The delegation of power referred to in Articles 6 and 26 shall be conferred on the Commission for a period of seven years from [the date of the publication of this Regulation]. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.*';

(b) In paragraph 3, the references to '*Article 11(7), Article 17(3) and Article 25*' are replaced by references to '*Articles 6 and 26*';

(c) At the beginning of paragraph 4, a new sentence is added:

'*Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.*';

(d) In paragraph 5, the references to '*Article 11(7), Article 17(3) and Article 25*' are replaced by references to '*Articles 6 and 26*'.

(87) Article 27 is renumbered Article 37. In paragraph 1, the first sentence is replaced by:

'*The Commission shall be assisted by the Single Sky Committee, hereinafter referred to as 'the Committee', composed of two representatives of each Member State and chaired by the Commission. The Committee shall ensure an appropriate consideration of the interests of all categories of users*.'.

(88) As regards Article 28, reference is made to point 45 above.

(89) Article 29 is deleted.

(90) Article 30 is renumbered Article 39, and reworded as follows:

'The Union and its Member States shall aim at and support the extension of the Single European Sky to countries which are not members of the European Union. To that end, they shall endeavour, in the framework of agreements concluded with neighbouring third countries, to extend the Single European Sky to those countries. In addition, they shall endeavour to cooperate with those countries either in the context of agreements on network functions, or in the framework of the Agreement between the Union and Eurocontrol providing a general framework for enhanced cooperation, reinforcing the 'pan-European dimension' of ATM.'.

(91) Article 31 is renumbered Article 40. The title is replaced by the following: *'Support by other* bodies' and the Article is reworded as follows:

'*The Commission may request support from other bodies for the fulfilment of its tasks under this Regulation.*'.

(92) Article 32 is renumbered Article 41 and is reworded as follows:

'*1. Neither the national supervisory authorities, acting in accordance with their national legislation, nor the Commission, nor the Agency, whether or not it is acting as PRB, nor the Network Manager shall disclose information of a confidential nature, in particular information about air navigation service providers, their business relations or their cost components.*

2. Paragraph 1 shall be without prejudice to the right of disclosure by national supervisory authorities, the Commission or the Agency acting as PRB where this is essential for the fulfilment of their duties, in which case such disclosure shall be proportionate and shall have regard to the legitimate interests of air navigation service providers, airspace users, airports or other relevant stakeholders in the protection of their commercially sensitive information.

3. Information and data provided pursuant to the charging scheme laid down in Articles 19 to 24, in particular as regards determined costs, actual costs and revenues of designated air traffic service providers shall be publicly disclosed.'.

(93) Article 33 is renumbered Article 42. The first sentence is reworded as follows:

'*Member States shall lay down rules on penalties applicable to infringements of this Regulation and of the delegated and implementing acts adopted on the basis thereof in particular by airspace users, airport operators and air navigation service providers, and shall take all measures necessary to ensure that they are implemented.*'.

(94) Article 34 is renumbered Article 43 and reworded as follows:

‘*1. The Commission shall conduct an evaluation to assess the application of this Regulation by 2030. When justified for this purpose, the Commission may request from the Member States information relevant to the application of this Regulation.*

2. The Commission shall forward its findings to the European Parliament and to the Council. The findings of the evaluation shall be made public.’.

(95) Article 35 is renumbered Article 44. The punctuation is changed, as a result of which the text reads as follows:

‘*This Regulation shall not prevent the application of measures by a Member State to the extent that these are needed to safeguard essential security or defence policy interests. Such measures are in particular those which are imperative:*

(a) for the surveillance of airspace that is under its responsibility in accordance with ICAO Regional Air Navigation agreements, including the capability to detect, identify and evaluate all aircraft using such airspace, with a view to seeking to safeguard safety of flights and to take action to ensure security and defence needs;

(b) in the event of serious internal disturbances affecting the maintenance of law and order;

(c) in the event of war or serious international tension constituting a threat of war;

(d) for the fulfilment of a Member State's international obligations in relation to the maintenance of peace and international security;

(e) in order to conduct military operations and training, including the necessary possibilities for exercises.’.

(96) Article 36 is deleted.

(97) Article 37 is renumbered Article 45 and the reference to Regulation (EC) 552/2004 is deleted.

(98) Article 38 is renumbered Article 46. Its text set out in the initial proposal is numbered paragraph 1 and the following paragraph 2 is inserted:

‘*2. Article 3(3) shall apply from [OP please insert the date - 48 months after the entry into force of this Regulation]*.

Articles 10 to 24 shall apply as from 1 July 2023. However, Article 11 of Regulation (EC) No 549/2004 and Article 15 of Regulation (EC) No 550/2004, and the implementing acts adopted on the basis thereof, shall continue to apply for the purposes of the implementation of the performance and charging schemes pertaining to the third reference period.

Article 26(3) and Article 32 shall apply to the Network Manager from the day on which an appointment decision, adopted in accordance with Article 27(2) after the entry into force of this Regulation and encompassing those provisions, becomes applicable.’.

<u>Annexes</u>

(99) Annex I is deleted.

(100) Annex II is renumbered Annex I. Its title is replaced by the following: ‘*Conditions that may be attached to certificates referred to in Article 6*’. Its text is reworded as follows:

‘*Additional conditions attached to certificates may, as appropriate, be related to:*

(a) ring-fencing or restriction of operations of services other than those related to the provision of air navigation services;

(b) contracts, agreements or other arrangements between the service provider and a third party and which concern the service(s);

(c) provision of information reasonably required for the verification of the requirements of Article 6(1);

(d) any other legal conditions which are not specific to air navigation services, such as conditions relating to the suspension or revocation of the certificate.’.

(101) A new Annex II is added, titled ‘*Repealed regulations with the amendment thereto*’, and worded as follows:

‘

Regulation (EC) No 549/2004 of the European Parliament and of the Council *(OJ L 96, 31.3.2004, p. 1)*	
Regulation (EC) No 550/2004 of the European Parliament and of the Council *(OJ L 96, 31.3.2004, p. 10)*	
Regulation (EC) No 551/2004 of the European Parliament and of the Council *(OJ L 96, 31.3.2004, p. 20)*	
Regulation (EC) No 1070/2009 of the European Parliament and of the Council *(OJ L 300, 14.11.2009, p. 34)*	*Only Articles 1, 2 and 3*

’

(102) Annex III is adapted to the terms of the present amended proposal.

To facilitate reading and examination, the full text of the amended proposal for codification is attached hereto.

↓ 549/2004 (adapted)

2013/0186 (COD)

Amended proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on the implementation of the Single European Sky

(recast)

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty ⌦ on the Functioning of the European Union ⌫ ~~establishing the European Community~~, and in particular Article ~~80(2)~~ ⌦ 100(2) ⌫ thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee[21],

Having regard to the opinion of the Committee of the Regions[22],

Acting in accordance with the ordinary legislative procedure,

Whereas:

⇩ new

(1) Regulation (EC) No 549/2004 of the European Parliament and of the Council[23], Regulation (EC) No 550/2004 of the European Parliament and of the Council[24] and Regulation (EC) No 551/2004 of the European Parliament and of the Council[25] have been substantially amended. Since further amendments are to be made, those Regulations should be recast in the interests of clarity.

[21] ~~OJ C 241, 7.10.2002, p. 24.~~ OJ C […], […], p. […].

[22] ~~OJ C 278, 14.11.2002, p. 13.~~ OJ C […], […], p. […].

[23] 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) (OJ L 96, 31.3.2004, p. 1).

[24] 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) (OJ L 96, 31.3.2004, p. 10).

[25] 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) (OJ L 96, 31.3.2004, p. 20).

🡻 549/2004 recital 1 (adapted)

~~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.~~

🡻 549/2004 recital 2 (adapted)

~~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.~~

🡻 1070/2009 recital 2 (adapted)

⇨ new

(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)~~, 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)~~, 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)~~, and Regulation (EC) No 552/2004 of the European Parliament and of the Council[26] ~~of 10 March 2004 on the interoperability of the European air traffic management network (the interoperability Regulation)~~, laid down a firm legal basis for a seamless, interoperable and safe air traffic management (ATM) system. ⇨ The adoption of the second package, namely, Regulation (EC) No 1070/2009 of the European Parliament and of the Council[27], further strengthened the Single European Sky initiative by introducing the performance scheme and the Network Manager concepts to further improve the performance of the European ATM network. Regulation (EC) No 552/2004 has been repealed by Regulation (EU) 2018/1139 of the European Parliament and of the Council[28], as the rules necessary for interoperability of ATM systems, constituents and procedures have been incorporated in that Regulation. ⇦

[26] Regulation (EC) No 552/2004 of the European Parliament and of the Council of 10 March 2004 on the interoperability of the European air traffic management network (the interoperability Regulation) (OJ L 96, 31.3.2004, p. 26).

[27] 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 (OJ L 300, 14.11.2009, p. 34).

[28] Regulation (EU) 2018/1139 of the European Parliament and of the Council of 4 July 2018 on common rules in the field of civil aviation and establishing a European Union Aviation Safety Agency, and amending

⇩ new

(3) In order to take into account the changes introduced in Regulation (EU) 2018/1139, it is necessary to align the content of this Regulation with that of Regulation (EU) 2018/1139.

🡻 550/2004 recital 3 (adapted)

~~Regulation (EC) No 549/2004 of the European Parliament and of the Council of 10 March 2004 (the framework Regulation)[29] lays down the framework for the creation of the single European sky.~~

🡻 551/2004 recital 4 (adapted)

~~Regulation (EC) No 549/2004 of the European Parliament and of the Council of 10 March 2004 (the framework Regulation)[30] lays down the framework for the creation of the single European sky.~~

🡻 551/2004 recital 5 (adapted)

(4) 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 States of the ~~Community~~ ⌦ Union ⌫ , subject to applicable international conventions, exercise the powers of a public authority when controlling air traffic.

🡻 1070/2009 recital 1

(5) 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.

Regulations (EC) No 2111/2005, (EC) No 1008/2008, (EU) No 996/2010, (EU) No 376/2014 and Directives 2014/30/EU and 2014/53/EU of the European Parliament and of the Council, and repealing Regulations (EC) No 552/2004 and (EC) No 216/2008 of the European Parliament and of the Council and Council Regulation (EEC) No 3922/91 (OJ L 212, 22.8.2018, p. 1).

29 ~~See page 1 of this Official Journal.~~

30 ~~See page 1 of this Official Journal.~~

🡻 1070/2009 recital 37 (adapted)

⇨ new

(6) The simultaneous pursuit of the goals of augmentation of air traffic safety standards and improvement of the overall performance of ATM ⌦ and air navigation services ⌫ (ANS) for general air traffic in Europe ~~require~~ ⌦ requires ⌫ that the human factor be taken into account. Therefore, the Member States should ~~consider the introduction of~~ ⇨ uphold ⇦ 'just culture' principles. ⇨ The opinions and recommendations of the Expert Group on the Human Dimension[31] of the Single European Sky should be considered and taken into account. ⇦

⇩ new

(7) Improvements in the environmental performance of ATM also directly contribute to the achievement of the objectives contained in the Paris Agreement and in the Commission's European Green Deal, in particular through the reduction of aviation emissions.

🡻 549/2004 recital 6 (adapted)

~~(8)~~ ⌦ In 2004, ⌫ t~~T~~he Member States have adopted a general statement on military issues related to the Single European Sky[~~32~~]. 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.

🡻 549/2004 recital 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.~~

🡻 549/2004 recital 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 Eurocontrol, and in line with the principles laid down by the 1944 Chicago Convention on International Civil Aviation.~~

[31] C(2017) 7518 final

[32] ~~See page 9 of this Official Journal.~~

↓ 549/2004 recital 5 (adapted)

(9) 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~~ ⌦ Union under Article 100(2) of the Treaty on the Functioning of the European Union ⌫.

↓ 549/2004 recital 23 (adapted)

~~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.~~

↓ 550/2004 recital 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 satisfiedunder this new environment.~~

↓ 550/2004 recital 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 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)~~[33]~~. The establishment of a harmonised organisation for the provision of such services is important in order to respond adequately to the demand of airspace users and to regulate air traffic safely and efficiently.~~

↓ 551/2004 recital 1

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

↓ 551/2004 recital 2 (adapted)

~~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.~~

[33] ~~See page 20 of this Official Journal.~~

↓ 551/2004 recital 3 (adapted)

~~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.~~

↓ 551/2004 recital 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.~~

↓ 551/2004 recital 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.~~

↓ 549/2004 recital 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.~~

↓ 549/2004 recital 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 Union level, while allowing for detailed implementing rules that take account of specific local conditions, the Community Union 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 this objective.~~

↓ 549/2004 recital 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.~~

↓ 549/2004 recital 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.~~

↓ 549/2004 recital 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.~~

↓ 1070/2009 recital 9 (adapted)

⇨ new

(10) 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~~ ⌧ a national supervisory authority ⌫ from ⇨ being part of a regulatory authority competent for several regulated sectors if that regulatory authority fulfils the independence requirements, or from being joined in terms of its organisation with the national competition authority.⇦ ~~exercising their tasks within an administrative framework~~.

⇩ new

(11) The financing of the national supervisory authorities should guarantee their independence, and should allow them to operate in accordance with the principles of fairness, transparency, non-discrimination and proportionality. Appropriate procedures for appointing staff should contribute to guaranteeing the independence of the national supervisory authorities, ensuring in particular that the appointment of persons in charge of strategic decisions is made by a public authority which does not directly exert ownership rights over air navigation service providers.

🡻 1070/2009 recital 10

⇨ new

(12) National supervisory authorities have a key role to play in the implementation of the ~~s~~Single European ~~s~~Sky and ~~the Commission~~ ⇨ they ⇦ should therefore ~~facilitate cooperation among them~~ ⇨ cooperate with each other ⇦ in order to enable the exchange of ⇨ information on their work and decision-making principles, ⇦ best practices ⇨ and procedures as well as with regard to the application of this Regulation ⇦ and to develop a common approach, including through enhanced cooperation at regional level. This cooperation should take place on a regular basis.

🡻 550/2004 recital 6

~~Member States are responsible for monitoring the safe and efficient provision of air navigation services and for the control of compliance by air navigation service providers with the common requirements established at Community level.~~

🡻 550/2004 recital 7

~~Member States should be permitted to entrust to recognised organisations, which are technically experienced, the verification of compliance of air navigation service providers with the common requirements established at Community level.~~

🡻 549/2004 recital 17 (adapted)

~~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[34] should also be consulted.~~

⇩ new

(13) The cooperation between air traffic service providers is an important tool for improving the performance of the European ATM system and should be encouraged. Member States should be able to set up cooperation mechanisms not limited to predefined forms of cooperation and geographical areas.

(14) The safety certification and safety oversight of air navigation service providers are conducted by the national competent authorities or by the European Union Aviation Safety Agency (the Agency), in accordance with the requirements and processes laid

[34] ~~OJ L 225, 12.8.1998, p. 27.~~

down in Regulation (EU) 2018/1139. Additional requirements related to financial robustness, liability and insurance cover are necessary for the provision of air navigation services and should be subject to an economic certificate. An air navigation service provider should only be able to offer services in the Union where it holds both a safety certificate and the economic certificate.

(15) There should be no discrimination between airspace users as to the provision of equivalent air navigation services.

(16) Air traffic services, provided on an exclusive basis, should be subject to designation and minimum public interest requirements.

(17) Air traffic service providers or airport operators should have the choice to procure communication, navigation and surveillance services (CNS), aeronautical information services (AIS), air traffic data services (ADS), meteorological services (MET) or terminal air traffic services under market conditions, without prejudice to safety requirements, where they find that such procurement enables cost-efficiency gains. The possibility to resort to such procurement is expected to allow for more flexibility and to promote innovation in services, without affecting the specific needs of the military regarding confidentiality, interoperability, system resilience, data access, and ATM security.

(18) Where terminal air traffic services are procured, they should not be subject to the charging scheme set out in this Regulation, nor to, Article 1(4) of Directive 2009/12/EC of the European Parliament and of the Council[35], linked to the applicability of that scheme.

(19) The provision of *en route* air traffic services should be organisationally separated from the provision of CNS, AIS, ADS, MET and terminal air traffic services, including through the separation of accounts, in order to ensure transparency and avoid discrimination, cross-subsidisation and distortion of competition.

(20) Where applicable, the procurement of air navigation services should be carried out in accordance with Directive 2014/24/EU of the European Parliament and of the Council[36] and Directive 2014/25/EU of the European Parliament and of the Council[37]. National supervisory authorities should ensure that procurement requirements for air navigation services are fulfilled.

(21) The traffic management of unmanned aircraft requires the availability of common information services. In order to contain the costs of such traffic management, prices for common information services should be based on cost and a reasonable mark-up for profit, and should be subject to approval by national supervisory authorities. To enable the provision of the service, the required data should be made available by air navigation service providers.

(22) The performance and charging schemes are intended to make air navigation services provided under conditions other than market conditions more cost-efficient and to promote better service quality and should, to this end, include relevant and appropriate

---

35 Directive 2009/12/EC of the European Parliament and of the Council of 11 March 2009 on airport charges (OJ L 70, 14.3.2009, p. 11).

36 Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ L 94, 28.3.2014, p. 65).

37 Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC (OJ L 94, 28.3.2014, p. 243).

incentives. In view of this objective, the performance and charging schemes should not cover services supplied under market conditions.

(23) To be most effective, the necessary oversight regarding the performance and charging schemes should be directed at designated air traffic service providers as such.

(24) The responsibilities for the oversight in respect of the performance and charging schemes should be appropriately divided.

(25) Given the cross border and network elements inherent in the provision of *en route* air navigation services and the fact that, as a consequence, performance is notably to be assessed against Union-wide performance targets, a Union body should be in charge of the assessment and approval of the performance plans and performance targets for *en route* air navigation services, subject to judicial review by an appeal body and eventually by the Court of Justice. In order to ensure that the tasks be carried out with a high level of expertise and necessary independence, that Union body should be the Agency acting as Performance Review Body (PRB), functioning in accordance with the dedicated governance rules set out in Regulation (EU) 2018/1139. Given their knowledge of the local circumstances, necessary to assess terminal air navigation services, national supervisory authorities should be in charge of the assessment and approval of the performance plans and performance targets for terminal air navigation services. The allocation of costs between *en route* and terminal air navigation services constitutes a single operation, relevant to both types of services, and should therefore be subject to the oversight of the Agency acting as PRB.

(26) Draft performance plans in the area of *en route* and terminal navigation services should be consistent with respective Union-wide performance targets and conform to certain qualitative criteria, so as to ensure as much as possible that the targets set are effectively met. The assessment procedure should ensure that shortcomings are swiftly corrected.

(27) The performance of the network functions should be subject to criteria specific to them, having regard to the peculiar nature of these functions. The network functions should be subject to performance targets in the key performance areas of the environment, capacity and cost-efficiency.

(28) The charging scheme should be based on the principle that airspace users should pay for the cost incurred for the provision of the services received but that only cost imputable to such service and not covered otherwise should be taken into account. The costs related to the Network Manager should be included in the determined costs eligible to be charged to airspace users. Charges should encourage the safe, efficient, effective and sustainable provision of air navigation services with a view to achieving a high level of safety and cost-efficiency and meeting the performance targets and they should stimulate integrated service provision, whilst reducing the environmental impact of aviation.

(29) Mechanisms for modulation of charges to improve environmental performance and service quality, notably through increased use of sustainable alternative fuels, increased capacity and reduced delays, while maintaining an optimum safety level, should be set up at Union-wide level given the cross-border nature of aviation. National supervisory authorities should also have the possibility to establish mechanisms at local level regarding terminal services.

(30) In order to incentivise airspace users to fly the shortest route, in particular in times of congestion, it should be possible to establish a common unit rate for *en route* services

across the Single European Sky airspace. The establishment of any such common unit rate should be revenue neutral for air traffic service providers.

(31) Provision should be made for the transparency of the accounts of air navigation service providers, as one means to prevent cross-subsidisation and ensuing distortions.

(32) ATM network functions should contribute to the sustainable development of the air transport system and support the achievement of Union-wide performance targets. They should ensure the sustainable, efficient and environmentally optimal use of airspace and of scarce resources, reflect operational needs in the deployment of the European ATM network infrastructure and should provide support in case of network crises. A number of tasks contributing to the execution of these functions should be carried out by a Network Manager, whose action should involve all operational stakeholders concerned.

(33) In the cooperative decision making process for the decisions to be taken by the Network Manager, the interest of the network should prevail. Parties to the cooperative decision-making process should therefore act to the maximum extent possible with a view to improving the functioning and performance of the network. The procedures for the cooperative decision-making process should promote the interest of the network, and be such that issues are resolved and consensus found wherever possible.

(34) To enhance the customer focus of air traffic service providers and to increase the possibility of airspace users to influence decisions which affect them, the consultation and participation of stakeholders in major operational decisions of the air traffic service providers should be made more effective.

↓ 1070/2009 recital 11 (adapted)

~~Conditions attached to certificates should be objectively justified and should be non-discriminatory, proportionate and transparent, and compatible with relevant international standards.~~

↓ 550/2004 recital 2 (adapted)

~~The report of the High Level Group on the single European sky of November 2000 has confirmed the need for rules at Community level to distinguish between regulation and service provision and to introduce a system of certification aimed at preserving public interest requirements, most notably in terms of safety, and to improve charging mechanisms.~~

↓ 550/2004 recital 10

~~Whilst guaranteeing the continuity of service provision, a common system should be established for certifying air navigation service providers, which constitutes a means for defining the rights and obligations of those providers and for regular monitoring of compliance with such requirements.~~

↓ 550/2004 recital 12

~~The certificates 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 the country in which they obtained their certificates, within the limits of the safety requirements.~~

↓ 550/2004 recital 14

~~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 certification should provide for a framework to enable Member States to designate providers of air traffic services, regardless of where they have been certified.~~

↓ 550/2004 recital 5

~~The provision of air traffic services, as envisaged by this Regulation, is connected with the exercise of the powers of a public authority, which are not of an economic nature justifying the application of the Treaty rules of competition.~~

↓ 550/2004 recital 13

~~The provision of communication, navigation and surveillance services, as well as aeronautical information services, should be organised under market conditions whilst taking into account the special features of such services and maintaining a high level of safety.~~

↓ 550/2004 recital 15

~~On the basis of their analysis of safety considerations, Member States should be able to designate one or more providers of meteorological services in respect of all or part of the airspace under their responsibility, without the need to organise a call for tenders.~~

↓ 550/2004 recital 19

~~Charging conditions applying to airspace users should be fair and transparent.~~

↓ 550/2004 recital 20

~~User charges should provide remuneration for the facilities and services provided by air navigation service providers and Member States. The level of user charges should be proportionate to the cost, taking into consideration the objectives of safety and economic efficiency.~~

↓ 550/2004 recital 21

~~There should be no discrimination between airspace users as to the provision of equivalent air navigation services.~~

↓ 550/2004 recital 22

~~Air navigation service providers offer certain 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 generate at, or as close as possible to, the point of use.~~

↓ 550/2004 recital 23

~~It is important to ensure the transparency of the costs to which such facilities or services 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.~~

↓ 550/2004 recital 24

~~There should be scope for modulating charges that contribute to maximising system-wide capacity. Financial incentives may be 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.~~

↓ 550/2004 recital 25

~~In the context of those revenues raised to provide a reasonable return on assets, and in direct correlation with the savings made from efficiency improvements, the Commission should study the possibility of establishing a reserve aimed at reducing the impact of a sudden increase in charges to airspace users at times of reduced levels of traffic.~~

↓ 550/2004 recital 26

~~The Commission should examine the feasibility of organising temporary financial aid for measures to increase the capacity of Europe's air traffic control system as a whole.~~

↓ 550/2004 recital 27

~~The establishment and imposition of charges on airspace users should be reviewed by the Commission on a regular basis, in cooperation with Eurocontrol, and with national supervisory authorities and airspace users.~~

↓ 551/2004 recital 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.~~

↓ 551/2004 recital 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.~~

⇩ new

(35) Availability of relevant operational data is essential for enabling the flexible provision of air traffic data services, on cross-border and on Union-wide bases. Therefore, such data should be made available to relevant stakeholders, including to prospective new providers of air traffic data services. Accuracy of information including on airspace status and on specific air traffic situations and timely distribution of this information to civil and military controllers has a direct impact on the safety and efficiency of operations. Timely access to up-to-date information on airspace status is essential for all parties wishing to take advantage of airspace structures made available when filing or re-filing their flight plans.

↓ 550/2004 recital 16

~~Air navigation service providers should establish and maintain close cooperation with military authorities responsible for activities that may affect general air traffic, through appropriate arrangements.~~

↓ 550/2004 recital 17

~~The accounts of all air navigation service providers should provide for maximum transparency.~~

↓ 550/2004 recital 18

~~The introduction of harmonised principles and conditions for access to operational data should facilitate the provision of air navigation services and the operation of airspace users and airports under a new environment.~~

↓ 551/2004 recital 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.~~

↓ 551/2004 recital 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.~~

↓ 1070/2009 recital 30 (adapted)

⇨ new

(36) The provision of ~~modern,~~ complete, high-quality and timely aeronautical information has a significant impact on safety and on facilitating access to ~~Community~~ ⌦ Union ⌫ airspace and ⇨ the possibilities of moving ⇦ ~~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~~ ⇨ Access to those data should be facilitated through an appropriate information infrastructure ⇦.

⇩ new

(37) The safe and efficient use of airspace can only be achieved through close cooperation between civil and military airspace users, which in practice is mainly based on the concept of flexible use of airspace and effective civil-military coordination as established by ICAO. Rules should be established with a view to ensuring the application of this concept, and the Commission should be empowered to provide for measures ensuring greater harmonisation.

(38) The SESAR project is aimed at enabling the safe, efficient and environmentally sustainable development of air transport by modernising the European and global ATM system. In order to contribute to its full effectiveness, proper coordination between the phases of the project should be ensured. The European ATM Master Plan

should result from the SESAR definition phase, and should contribute to achieving the Union-wide performance targets.

(39) The concept of common projects should aim at implementing, in a timely, coordinated and synchronised manner, the essential operational changes identified in the European ATM Master Plan which have a network-wide impact.The Commission should be charged with carrying out a cost-benefit analysis in respect of the funding with a view to speedying up the deployment of the SESAR project.

(40) Compliance with the requirements for ATM systems and constituents established by Regulation (EU) 2018/1139 should ensure the interoperability of those systems and constituents, to the benefit of the Single European Sky.

↓ 551/2004 recital 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.~~

↓ 551/2004 recital 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.~~

↓ 551/2004 recital 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.~~

↓ 551/2004 recital 15

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

↓ 551/2004 recital 16

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

↓ 551/2004 recital 17

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

↓ 551/2004 recital 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.~~

↓ 549/2004 recital 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.~~

↓ 549/2004 recital 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[38]~~.

↓ 549/2004 recital 26 (adapted)

~~Article 8(2) of the Standard Rules of Procedure for committees[39] 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,~~

↓ 549/2004 recital 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.~~

[38] ~~OJ L 184, 17.7.1999, p. 23.~~
[39] ~~OJ C 38, 6.2.2001, p. 3.~~

↓ 549/2004 recital 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.~~

↓ 549/2004 recital 13

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

↓ 549/2004 recital 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.~~

↓ 549/2004 recital 15 (adapted)

~~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.~~

↓ 549/2004 recital 16

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

↓ 550/2004 recital 8

~~Smooth operation of the air transport system also requires uniform and high safety standards for air navigation service providers.~~

↓ 550/2004 recital 9

~~Arrangements should be made to harmonise the licensing systems for controllers, in order to improve the availability of controllers and to promote the mutual recognition of licences.~~

🡻 550/2004 recital 28

~~Owing to the particular sensitivity of information concerning air navigation 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 those providers,~~

🡻 549/2004 recital19

~~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.~~

🡻 549/2004 recital 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.~~

🡻 551/2004 recital 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,~~

🡻 549/2004 recital 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.~~

⇩ new

(41) In order to take into account technical or operational developments, in particular by amending annexes, or by supplementing the provisions on network management, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission. The content and scope of each delegation is set out in detail in the relevant Articles. When adopting delegated acts under this Regulation, it is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in

the Interinstitutional Agreement of 13 April 2016 on Better Law-Making[40]. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

(42) In order to ensure uniform conditions for the implementation of this Regulation, in particular with regard to the modalities of recruitment and selection procedures for national supervisory authorities, rules on the economic certification of air navigation service providers, rules for the implementation of the performance and charging schemes, in particular on the setting of Union-wide performance targets, the classification of *en route* and terminal air navigation services, the criteria and procedures for the assessment of the draft performance plans and performance targets of air traffic service providers and the Network Manager, the monitoring of performance, rules for the provision of information on costs and charges, the content and establishment of the cost base for charges and the setting of unit rates for air navigation services, incentive mechanisms and risk-sharing mechanisms, the appointment of the Network Manager and the terms and conditions of such appointment, the tasks of the Network Manager and the governance mechanisms to be applied by it, rules on the execution of the network functions, modalities of the consultation of stakeholders on major operational decisions of the air traffic service providers, requirements regarding the availability of operational data, conditions of access and setting of access prices, application of the concept of flexible use of airspace, the establishment of common projects and the governance mechanisms applicable to them, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council[41].

↓ 1070/2009 recital 11 (adapted)

(43) The social partners should be better informed and consulted on all measures having significant social implications. At ~~Community~~ ⌦ Union ⌫ level, the Sectoral Dialogue Committee set up under Commission Decision 98/500/EC[42] should also be consulted.

↓ 549/2004 recital 20 (adapted)

(44) The ~~sanctions~~ ⌦ penalties ⌫ 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.

---

[40] OJ L 123, 12.5.2016, p. 1.

[41] Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

[42] OJ L 225, 12.8.1998, p. 27.

⇩ new

(45) In view of the legal position of the Kingdom of Spain with regard to sovereignty and jurisdiction on the territory where the airport is located, this Regulation should not apply to Gibraltar airport.

🡻 549/2004 recital 24 (adapted)

(46) Since the objective of this Regulation, namely the ~~creation~~ ⌦ implementation ⌫ of the Single European Sky, cannot be sufficiently achieved by the Member States~~, by reason of the transnational scale of the action, and~~ ⌦ but ⌫ can ~~therefore~~ ⌦ rather, by reason of the transnational scale of the action, ⌫ be better achieved at ~~Community~~ ⌦ Union ⌫ level, ~~while allowing for detailed implementing rules that take account of specific local conditions,~~ the ~~Community~~ ⌦ Union ⌫ may adopt measures, in accordance with the principle of subsidiarity, as set out in Article 5 of the Treaty on European Union. 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 ~~this~~ ⌦ that ⌫ objective,

🡻 550/2004 (adapted)

HAVE ADOPTED THIS REGULATION:

CHAPTER I

GENERAL ⌦ PROVISIONS ⌫

🡻 1070/2009 Art. 1.1 (adapted)

⇨ new

Article 1

~~Objective~~ ⌦ Subject matter ⌫ and scope

1. ⇨ This Regulation lays down rules for the creation and effective functioning of ⇦ ~~The objective of~~ the ~~s~~Single European ~~s~~Sky ~~initiative is to enhance~~ ⌦ in order to reinforce ⌫ current air traffic safety standards, 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~~ ⌦ The ⌫ ~~s~~Single European ~~s~~Sky shall comprise a coherent pan-European network ~~of routes~~, ⇨ a progressively more integrated airspace, ⇦ network management and air traffic management systems based ~~only~~ on safety, efficiency,~~technical considerations~~ ⇨ interoperability and technological modernisation ⇦ , for the benefit of all airspace users,~~.~~ ⇨ citizens and the environment. ⇦ ~~In pursuit of this~~

~~objective, this Regulation establishes a harmonised regulatory framework for the creation of the single European sky.~~

↓ 1070/2009 Art. 1.2 (adapted)

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 44~~13~~. This Regulation ~~and the measures referred to in Article 3~~ ~~do~~ ⌦ does ⌫ not cover military operations and training.

↓ 1070/2009 Art. 1.3 (adapted)

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,~~ ⌦ aims to assist, ⌫ 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.

↓ 550/2004

~~CHAPTER I~~

~~GENERAL~~

~~*Article 1*~~

~~Scope and objective~~

~~1. Within the scope of the framework Regulation, this Regulation concerns the provision of air navigation services in the single European sky. The objective of this Regulation is to establish common requirements for the safe and efficient provision of air navigation services in the Community.~~

~~2. This Regulation shall apply to the provision of air navigation services for general air traffic in accordance with and within the scope of the framework Regulation.~~

↓ 551/2004

~~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)[43].~~

↓ 551/2004 (adapted)

⇨ new

~~4~~3. ~~Without prejudice to Article 10, t~~This Regulation shall apply to the airspace within the ICAO EUR ~~and AFI~~ region 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 ⌦ the ⌫ condition that they inform the Commission and the other Member States thereof.

↓ 551/2004

~~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.~~

↓ 1070/2009 Art. 1.1

~~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.~~

[43] ~~See page 10 of this Official Journal.~~

⇩ new

5. [In the event the Regulation is adopted before the end of the transition period: This Regulation shall not apply to Gibraltar airport.]

6. Unless otherwise provided, where reference is made to the European Union Aviation Safety Agency (the Agency), such reference shall be understood as aimed at the Agency in its capacity as safety authority and not as authority in charge of performance review.

🡻 549/2004 (adapted)

Article 2

Definitions

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

🡻 549/2004 (adapted)

⇨ new

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

1~~2~~.'aerodrome control service' means an ⌦ air traffic control ⌫ (ATC) service for aerodrome traffic;

2~~3~~.'aeronautical information service' means a service, established within ~~the~~ ⌦ a ⌫ defined area of coverage, responsible for the provision of aeronautical information and data necessary for the safety, regularity, and efficiency of air navigation;

3~~5~~.'air navigation service provider' means a public or private entity providing ⌦ one or more ⌫ air navigation services for general air traffic;

4~~4~~. 'air navigation services ⌦ (ANS) ⌫ ' means air traffic services; communication, navigation and surveillance services ⌦ (CNS) ⌫ ; meteorological services ~~for air navigation~~ ⌦ (MET) ⌫ ; ~~and~~aeronautical information services ⌦ (AIS) ⌫ ; ⇨ and air traffic data services (ADS); ⇦

5~~1~~. 'air traffic control (ATC) service' means a service provided for the purpose of:

(a) preventing collisions:

(i) between aircraft;~~,~~ ~~and~~

(ii) in the manoeuvring area between aircraft and obstructions; ~~and~~

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

⇩ new

6. ‘air traffic data services’ means services consisting in the collection, aggregation and integration of operational data from providers of surveillance services, from providers of MET and AIS and network functions and from other relevant entities, or the provision of processed data for air traffic control and air traffic management purposes;

7. ‘air traffic flow and capacity management (ATFCM)’ means a service aiming at protecting air traffic control from over-delivery and optimising the use of the available capacity;

🡻 549/2004 (adapted)

⇨ new

8~~9~~. ‘air traffic flow management ⌦ (ATFM) ⌫ ’ means a function ⇨ or service ⇦ established with the objective of contributing to a safe, orderly and expeditious flow of air traffic ⇨ covering the full trajectory ⇦ 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;

🡻 1070/2009 Art. 1.2(b)

⇨ new

9~~10~~. ‘air traffic management (ATM)’ means the aggregation of the airborne and ground-based functions ⇨ or services ⇦ (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;

🡻 549/2004

10~~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);

11~~6~~. ‘airspace block’ means an airspace of defined dimensions, in space and time, within which air navigation services are provided;

12~~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;

⇩ new

13. ‘airspace structure’ means a specific volume of airspace defined with a view to ensuring the safe and optimal operation of aircraft;

🡻 1070/2009 Art. 1.2(a) (adapted)

14~~8~~.‘airspace users’ means operators of aircraft operated ⌦ in accordance with ⌫ ~~as~~ general air traffic ⌦ rules ⌫ ;

🡻 1070/2009 Art. 1.2(g)

15~~23b~~.‘alerting service’ means a service provided to notify relevant organisations regarding aircraft in need of search and rescue aid, and to assist such organisations as required;

🡻 549/2004

⇨ new

16~~13~~.‘approach control service’ means an ATC service for arriving or departing controlled flights;

17~~12~~.‘area control service’ means an ATC service for controlled flights ⇨ in control areas ⇦ ~~a block of airspace~~;

⇩ new

18. ‘baseline value’ means a value defined by way of estimation for the purpose of setting performance targets and concerning determined costs or determined unit costs during the year preceding the start of the relevant reference period;

19. ‘benchmark group’ means a group of air traffic service providers with a similar operational and economic environment;

20. ‘breakdown value’ means the value obtained, for a given air traffic service provider, by breaking down a Union-wide performance target to the level of each air traffic service provider and serving as a reference for assessing consistency of the performance target set in draft performance plan with the Union-wide performance target;

🡻 549/2004

~~14.‘bundle of services’ means two or more air navigation services;~~

↓ 1070/2009 Art. 1.2(d) (adapted)

⇨ new

21~~15~~.‘certificate’ means a document issued ⇨ by the Agency,⇦ by a national ~~supervisory~~ ⇨ competent ⇦ authority ⌦ or by a national supervisory authority, ⌫ in any form complying with national law, which confirms that an ⇨ air traffic management and ⇦ air navigation service provider meets the requirements for providing a specific service;

⇩ new

22. ‘common information service (CIS)’ means a service consisting in the collection of static and dynamic data and their dissemination to enable the provision of services for the management of traffic of unmanned aircraft;

↓ 549/2004

23~~16~~.‘communication services’ means aeronautical fixed and mobile services to enable ground-to-ground, air-to-ground and air-to-air communications for ATC purposes;

~~18.‘concept of operation’ means the criteria for the operational use of the EATMN or of part thereof;~~

24~~19~~.‘constituents’ means tangible objects such as hardware and intangible objects such as software upon which the interoperability of the European Air Traffic management Network (EATMN) depends;

⇩ new

25. ‘control area’ means a controlled airspace extending upwards from a specified limit above the earth;

26. ‘cooperative decision-making’ means a process in which decisions are made based on interaction and consultation with Member States, operational stakeholders and other actors as appropriate;

↓ 1070/2009 Art. 1.2(j)

⇨ new

27~~41~~.‘cross-border services’ means ~~any situation where~~ air navigation services ~~are~~ provided in one Member State by a service provider ⇨ having its principal place of business in another Member State ⇦ ~~certified in another Member State~~;

⇩ new

28. ‘declaration’ means, for the purposes of air traffic management and air navigation services, a declaration as defined in Article 3(10) of Regulation (EU) 2018/1139;

29. ‘*en route* air navigation services’ means air traffic services related to control of an aircraft from the end of the take off and initial climb phase to the commencement of the approach and landing phase and the underlying air navigation services necessary to provide en route air traffic services.

30. ‘*en route* charging zone’ means a volume of airspace that extends from the ground up to, and including, upper airspace, where en route air navigation services are provided and for which a single cost base is established;

🡻 549/2004 (adapted)

31~~20~~.‘Eurocontrol’ is 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 Navigation[44];

32~~17~~.‘European air traffic management network’ (EATMN) means the collection of systems, listed in point 3.1 of Annex VIII~~I~~ to Regulation (EU) 2018/1139 ~~(EC) No 552/2004 of the European Parliament and of the Council of 10 March 2004 on the interoperability of the European air traffic management network (the interoperability Regulation)~~[45], enabling air navigation services in the ~~Community~~ ⌦ Union ⌫ to be provided, including the interfaces at boundaries with third countries;

🡻 1070/2009 Art. 1.2(c) (adapted)

33~~13a~~.‘ ⌦ European ⌫ ATM Master Plan’ means the plan endorsed by Council Decision 2009/320/EC[46], in accordance with Article 1(2) of 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)~~[47] and as subsequently amended;

44 ~~Convention modified by the protocol of 12 February 1981 and revised by the protocol of 27 June 1997.~~

45 ~~See page 33 of this Official Journal.~~

46 OJ L 95, 9.4.2009, p. 41.

47 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) (OJ L 064, 2.3.2007, p.1).

↓ 1070/2009 Art. 1.2(f)

⇨ new

34~~22~~.‘flexible use of airspace’ means an airspace management concept ⇨ based on the fundamental principle that airspace should not be designated as either pure civil or military airspace, but rather be considered as a continuum in which all user requirements have to be accommodated to the extent possible ⇦ ~~applied in the European Civil Aviation Conference area on the basis of the ‘Airspace management handbook for the application of the concept of the flexible use of airspace’ issued by (Eurocontrol)~~;

↓ 549/2004

~~23.‘flight information region’ means an airspace of defined dimensions within which flight information services and alerting services are provided;~~

↓ 1070/2009 Art. 1.2(g)

35~~23a~~.‘flight information service’ means a service provided for the purpose of giving advice and information useful for the safe and efficient conduct of flights;

↓ 549/2004

~~24.‘flight level’ means a surface of constant atmospheric pressure which is related to the specific pressure datum of 1013,2 hectopascals and is separated from other such surfaces by specific pressure intervals;~~

↓ 1070/2009 Art. 1.2(h)

~~25.‘functional airspace block’ means an airspace block based on operational requirements and established regardless of State boundaries, where the provision of air navigation services and related functions are performance-driven and optimised with a view to introducing, in each functional airspace block, enhanced cooperation among air navigation service providers or, where appropriate, an integrated provider;~~

↓ 549/2004 (adapted)

⇨ new

36~~26~~.‘general air traffic’ means all movements of civil aircraft, as well as all movements of State aircraft (including military, customs and police aircraft) when ~~these~~ ⌦ those ⌫ movements are carried out in conformity with the procedures of

the ⌦ International Civil Aviation Organisation (ICAO) as established by the 1944 Chicago Convention on International Civil Aviation ⌫ ~~ICAO~~;

~~27.'ICAO' means the International Civil Aviation Organisation, as established by the 1944 Chicago Convention on International Civil Aviation;~~

37~~28~~.'interoperability' means a set of functional, technical and operational properties required of the systems and constituents of the EATMN and of the procedures for its operation, in order to enable its safe, seamless and efficient operation~~. Interoperability is achieved by making the systems and constituents compliant with the essential requirements~~;

38~~29~~.'meteorological services' means ~~those~~ ⌦ the ⌫ facilities and services that provide aircraft with meteorological forecasts, ⇨ warnings, ⇦ ⌦ briefings ⌫ ~~briefs~~ and observations ⇨ for air navigation purposes ⇦, as well as any other meteorological information and data provided by States for aeronautical use;

⇩ new

39. 'national competent authority' means the entities as defined in point (34) of Article 3 of Regulation (EU) 2018/1139;

40. 'national supervisory authority' means the national body or bodies entrusted by a Member State with the tasks under this Regulation other than the tasks covered by the national competent authority;

🡻 549/2004 (adapted)

41~~30~~.'navigation services' means ~~those~~ ⌦ the ⌫ facilities and services that provide aircraft with positioning and timing information;

⇩ new

42. 'network crisis' means a state of inability to provide air traffic management and air navigation services at required level resulting in a major loss of network capacity, or a major imbalance between network capacity and demand, or a major failure in the information flow in one or several parts of the network following an unusual and unforeseen situation;

43. 'Network Manager' means the entity entrusted with the tasks necessary to contribute to the execution of the network functions referred to in Article 26, in accordance with Article 27;

🡻 549/2004 (adapted)

⇨ new

44~~31~~.'operational data' means information concerning all phases of flight that ~~are~~ ⌦ is ⌫ required ~~to take operational decisions~~ ⇨ for operational purposes ⇦ by air

navigation service providers, airspace users, airport operators and other actors involved;

~~32.'procedure', as used in the context of the interoperability Regulation, means a standard method for either the technical or the operational use of systems, in the context of agreed and validated concepts of operation requiring uniform implementation throughout the EATMN;~~

⇩ new

45. 'performance plan' means a plan drafted or adopted, according to the case, by air traffic service providers and the Network Manager and aimed at improving the performance of air navigation services and network functions;

🡻 549/2004

46~~33~~.'putting into service' means the first operational use after the initial installation or upgrade of a system;

47~~34~~.'route network' means a network of specified routes for channelling the flow of general air traffic as necessary for the provision of ATC services;

~~35.'routing' means the chosen itinerary to be followed by an aircraft during its operation;~~

~~36.'seamless operation' means the operation of the EATMN in such a manner that from the user's perspective it functions as if it were a single entity;~~

⇩ new

48. 'SESAR definition phase' means the phase comprising the establishment and updating of the long-term vision of the SESAR project, of the related concept of operations enabling improvements at every stage of flight, of the required essential operational changes within the EATMN and of the required development and deployment priorities;

49. 'SESAR deployment phase' means the successive phases of industrialisation and implementation, during which the following activities are conducted: standardisation, production and certification of ground and airborne equipment and processes necessary to implement SESAR solutions (industrialisation); and procurement, installation and putting into service of equipment and systems based on SESAR solutions, including associated operational procedures (implementation);

50. 'SESAR development phase' means the phase during which research, development and validation activities aiming to deliver mature SESAR solutions are conducted;

51. 'SESAR project' means the project to modernise air traffic management in Europe, aimed at providing the Union with a high performance, standardised and interoperable air traffic management infrastructure, and consisting in an innovation

cycle that includes the SESAR definition phase, the SESAR development phase and the SESAR deployment phase;

52. ‘SESAR solution’ means a deployable output of the SESAR development phase introducing new or improved standardised and interoperable operational procedures or technologies;

549/2004 (adapted)

53~~38.~~‘surveillance services’ means ~~those~~ the facilities and services used to determine the respective positions of aircraft to allow safe separation;

54~~39~~.‘system’ means the aggregation of airborne and ground-based constituents, as well as space-based equipment, that provides support for air navigation services for all phases of flight;

---

new

55. ‘terminal air navigation services’ means aerodrome control services or aerodrome flight information services which include air traffic advisory services and alerting services, air traffic services related to the approach and departure of aircraft within a distance from the airport concerned necessary to meet operational requirements and the necessary underlying air navigation services;

56. ‘terminal charging zone’ means an airport or a group of airports, located within the territories of a Member State, where terminal air navigation services are provided and for which a single cost base is established;

549/2004

57~~40~~.‘upgrade’ means any modification that changes the operational characteristics of a system.

549/2004

~~*Article 3*~~

~~**Fields for action by the Community**~~

~~1. This Regulation establishes a harmonised regulatory framework for the creation of the single European sky in conjunction with:~~

~~(a) 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)[48];~~

[48] ~~See page 20 of this Official Journal.~~

~~(b) 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)[49]; and~~

~~(c) Regulation (EC) No 552/2004 of the European Parliament and of the Council of 10 March 2004 on the interoperability of the European Air Traffic Management network (the interoperability Regulation)[50];~~

~~and with the implementing rules adopted by the Commission on the basis of this Regulation and the regulations referred to above.~~

~~2. The measures referred to in paragraph 1 shall apply subject to the provisions of this Regulation.~~

↓ 1070/2009 Art. 1.3 (adapted)

⇨ new

CHAPTER II

⌦ NATIONAL SUPERVISORY AUTHORITIES ⌫

Article 3~~4~~

⌦ Nomination, establishment and requirements regarding ⌫ ~~N~~national supervisory authorities

1. Member States shall, jointly or individually, either nominate or establish a body or bodies as their national supervisory authority in order to assume the tasks assigned to such authority ~~under~~ ⌦ by ⌫ this Regulation ~~and under the measures referred to in Article 3~~.

~~2. The national supervisory authorities shall be independent of 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.~~

↓ 1070/2009 Art. 1.3 (adapted)

⇨ new

~~3~~2. ⌦ The ⌫ ~~N~~national supervisory authorities shall exercise their powers impartially, independently and transparently~~.~~ ~~This shall be achieved by applying appropriate management and control mechanisms~~ ⇨ and shall be organised, staffed, managed and financed accordingly. ⇦ ~~, including within the administration of a Member State. However, this shall not prevent the national supervisory authorities from exercising their tasks within the rules of organisation of national civil aviation authorities or any other public bodies~~

~~49 See page 10 of this Official Journal.~~

~~50 See page 26 of this Official Journal.~~

⇩ new

3. Without prejudice to paragraph 1, the national supervisory authorities shall be legally distinct and independent from any other public or private entity in terms of their organisation, functioning, legal structure and decision-making.

The national supervisory authorities shall also be independent in terms of their organisation, funding decisions, legal structure and decision-making from any air navigation service provider.

4. Member States may set up national supervisory authorities which are competent for several regulated sectors, if those integrated regulatory authorities fulfil the independence requirements set out in this Article. The national supervisory authority may also be joined in respect of its organisational structure with the national competition authority referred to in Article 11 of Council Regulation (EC) No 1/2003[51], if the joint body fulfils the independence requirements set out in this Article.

5. Staff of the national supervisory authorities shall comply with the following requirements:

(a) they shall be recruited under clear and transparent processes which ensure their independence;

(b) they shall be selected on the basis of their specific qualifications, including appropriate competence and relevant experience or they shall be subject to appropriate training.

Staff of national supervisory authorities shall act independently, in particular by avoiding conflicts of interest between air navigation service provision and the execution of their tasks.

6. In addition to the requirements set out in paragraph 5, persons in charge of strategic decisions shall be appointed by an entity of the Member State concerned which does not directly exert ownership rights over air navigation service providers. Member States shall decide whether these persons are appointed for a fixed and renewable term, or on a permanent basis which only allows dismissal for reasons not related to their decision-making. Persons in charge of strategic decisions shall not seek or take instructions from any government or other public or private entity when carrying out their functions for the national supervisory authority and shall have full authority over the recruitment and management of its staff.

They shall refrain from any direct or indirect interest that may be considered prejudicial to their independence and which may influence the performance of their functions. To that effect, they shall make an annual declaration of commitment and declaration of interests indicating any direct or indirect interests.

Persons in charge of strategic decisions, audits or other functions directly linked to performance targets or oversight of air navigation service providers, shall not hold any professional position or responsibility with any air navigation service provider after their term in the national supervisory authority, for at least a period of two years.

[51] Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ L 1, 4.1.2003, p. 1).

🡻 1070/2009 Art. 1.3 (adapted)

⇨ new

7~~4~~. Member States shall ensure that national supervisory authorities have the necessary ⌦ financial ⌫ resources and capabilities to carry out the tasks assigned to them under this Regulation in an efficient and timely manner. ⇨ The national supervisory authorities shall manage their staff based on their own appropriations, to be set in proportion to the tasks to be fulfilled by the authority in accordance with Article 4. ⇦

⇩ new

8. A Member State may request the Agency acting as Performance Review Body (PRB), to carry out the tasks related to the implementation of the performance and charging schemes laid down in Articles 14, 17, 19, 20, 21, 22 and 25, and in the implementing acts referred to in Articles 18 and 23 and for which the national supervisory authority of that Member State is responsible under this Regulation and the delegated and implementing acts adopted on the basis thereof.

Once the Agency acting as PRB accepts such a request, it shall become the supervisory authority responsible for the tasks covered by that request and the national supervisory authority of the requesting Member State shall be relieved of the responsibility for those tasks. The rules contained in Regulation (EU) 2018/1139 and pertaining to the Agency acting as PRB shall apply to the performance of these tasks, including as regards the levying of fees and charges.

🡻 1070/2009 Art. 1.3

⇨ new

9~~5~~. Member States shall notify the Commission of the names and addresses of the national supervisory authorities, as well as changes thereto, and of the measures taken to ensure compliance with ⇨ this Article⇦ ~~paragraphs 2,3 and 4~~.

⇩ new

10. The Commission shall establish detailed rules laying down the modalities of recruitment and selection procedures referred to in paragraph 5, points (a) and (b). Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 37(3).

🡻 1070/2009 Art. 2.1 (adapted)

Article 42

Tasks of the national supervisory authorities

1. The national supervisory authorities referred to in Article 3 4 of the framework Regulation shall ensure the appropriate supervision of the application of this Regulation, in particular with regard to the safe and efficient operation of air navigation service providers which provide services relating to the airspace falling under the responsibility of the Member State which nominated or established the relevant authority.:

⇩ new

(a) conduct the activities necessary for the issuance of the economic certificates referred to in Article 6, including the oversight of the holders of those economic certificates;

(b) oversee the correct application of procurement requirements in accordance with Article 8(6);

(c) apply the performance and charging schemes set out in in Articles 10 to 17 and 19 to 22 and the implementing acts referred to in Articles 18 and 23, within the limits of their tasks defined in those articles and acts, and oversee the application of the Regulation regarding the transparency of accounts of designated air traffic service providers in accordance with Article 25.

2. The national supervisory authorities shall be responsible for assessing and approving the price setting for the provision of the common information service, in accordance with Article 9.

🡻 1070/2009 Art. 2.1 (adapted)

⇨ new

32. To this end, eEach national supervisory authority shall organise proper ⌦ conduct the necessary ⌫ inspections and surveys ⇨ , audits and other monitoring activities ⇦ to ⇨ identify possible infringements by entities subject to their oversight under this Regulation of the requirements set out in this Regulation and the delegated and implementing acts adopted on the basis thereof ⇦ verify compliance with the requirements of this Regulation including human resources requirements for the provision of air navigation services.

It shall take all necessary enforcement measures which may, where appropriate, include the amendment, limitation, suspension or revocation of economic certificates issued by them in accordance with Article 6.

The air navigation service providers, airport operators and the common information service providers concerned shall comply with the measures taken by the national supervisory authorities to this effect.

⇩ new

Article 5

Co-operation between national supervisory authorities

1. The national supervisory authorities shall exchange information and work together in a network in the context of the Advisory Board for Performance Review referred to in Article 114a of Regulation (EU) 2018/1139.

2. The national supervisory authorities shall cooperate, where appropriate through working arrangements, for the purposes of mutual assistance in their monitoring and supervisory tasks and handling of investigations and surveys.

🡻 1070/2009 Art. 2.1 (adapted)

⇨ new

3. ~~In respect of functional airspace blocks that extend across the~~ ⇨ National supervisory authorities shall facilitate the provision of cross-border services by air navigation service providers for the purpose of improving network performance. In the case of provision of air navigation services in an ⇦ airspace falling under the responsibility of ⌦ two or ⌫ more ~~than one~~ Member ~~State~~⌦ States ⌫ , the Member States concerned shall conclude an agreement on the supervision ⇨ to be carried out by them under this Regulation, of ⇦ ~~with regard to~~ the air navigation service providers ⌦ concerned ⌫ ~~providing services relating to those blocks~~. ⇨ The national supervisory authorities concerned may establish a plan specifying the implementation of their co-operation with a view to giving effect to that agreement. ⇦

🡻 1070/2009 Art. 2.1

~~4. National supervisory authorities shall cooperate closely to ensure adequate supervision of air navigation service providers holding a valid certificate from one Member State that also provide services relating to the airspace falling under the responsibility of another Member State. Such cooperation shall include arrangements for the handling of cases involving non-compliance with the applicable common requirements set out in Article 8b(1) of Regulation (EC) No 216/2008 6 or with the conditions set out in Annex II.~~

🡻 1070/2009 Art. 2.1

~~5. In the case of cross-border provision of air navigation services, such arrangements shall include an agreement on the mutual recognition of the supervisory tasks set out in paragraphs 1 and 2 and of the results of these tasks. This mutual recognition shall apply also where arrangements for recognition between national supervisory authorities are made for the certification process of service providers.~~

⇩ new

4. In the case of provision of air navigation services in an airspace falling under the responsibility of another Member State, the agreements referred to in paragraph 3 shall provide for the mutual recognition of the discharge, by each of the authorities, of the supervisory tasks set out in this Regulation and of the results of the discharge of these tasks. They shall also specify which national supervisory authority shall be in charge of the economic certification set out in Article 6.

🡻 1070/2009 Art. 2.1 (adapted)

⇨ new

~~6~~5. ~~If~~ ⌦ Where ⌫ permitted by national law and with a view to regional cooperation, national supervisory authorities may also conclude agreements ⌦ on the ⌫ ~~regarding the~~ division of responsibilities regarding ⌦ the ⌫ supervisory tasks. ⇨ They shall notify the Commission of these agreements. ⇦

🡻 1070/2009 Art. 2.1

~~*Article 3*~~

~~Qualified entities~~

~~1. National supervisory authorities may decide to delegate in full or in part the inspections and surveys referred to in Article 2(2) to qualified entities that fulfil the requirements set out in Annex I.~~

~~2. Such a delegation granted by a national supervisory authority shall be valid within the Community for a renewable period of three years. National supervisory authorities may instruct any of the qualified entities located in the Community to undertake these inspections and surveys.~~

🡻 1070/2009 Art. 1.5

~~*Article 10*~~

~~Consultation of stakeholders~~

~~1. The Member States , acting in accordance with their national legislation, shall establish consultation mechanisms for appropriate involvement of stakeholders, including professional staff representative bodies , in the implementation of the single European sky.~~

↓ 550/2004 (adapted)

CHAPTER III

~~RULES FOR THE~~ ⌦ SERVICE ⌫ PROVISION ~~OF SERVICES~~

↓ 550/2004 (adapted)

~~Article 6~~

~~**Common requirements**~~

~~Common requirements for the provision of air navigation services shall be established in accordance with the procedure referred to in Article 5(3) of the framework Regulation. The common requirements shall include the following:~~

- ~~technical and operational competence and suitability,~~
- ~~systems and processes for safety and quality management,~~
- ~~reporting systems,~~
- ~~quality of services,~~
- ~~financial strength,~~
- ~~liability and insurance cover,~~
- ~~ownership and organisational structure, including the prevention of conflicts of interest,~~
- ~~human resources, including adequate staffing plans,~~
- ~~security.~~

Article 6~~7~~

⌦ Economic ⌫ certification ⌦ and requirements for ⌫ ~~of~~ air navigation service providers

~~1. The provision of all air navigation services within the Community shall be subject to certification by Member States.~~

↓ 550/2004

~~2. Applications for certification shall be submitted to the national supervisory authority of the Member State where the applicant has its principal place of operation and, if any, its registered office.~~

⇩ new

1. Air navigation service providers shall, in addition to the certificates they are required to hold pursuant to Article 41 of Regulation (EU) No 2018/1139, hold an economic certificate. This economic certificate shall be issued upon application, when the applicant has demonstrated sufficient financial robustness and has obtained appropriate liability and insurance cover.

The economic certificate referred to in this paragraph may be limited, suspended or revoked when the holder no longer complies with the requirements for issuing and maintaining such certificate.

2. An entity that holds an economic certificate referred to in paragraph 1 and a certificate referred to in Article 41 of Regulation (EU) No 2018/1139 shall be entitled to provide within the Union air navigation services for airspace users, under non-discriminatory conditions, without prejudice to Article 7(2).

3. The economic certificate referred to in paragraph 1 and the certificate referred to in Article 41 of Regulation (EU) No 2018/1139 may be subject to one or several conditions set out in Annex I. Such conditions shall be objectively justified, non-discriminatory, proportionate and transparent. The Commission shall be empowered to adopt delegated acts in accordance with Article 36 in order to amend the list set out in Annex I for the purposes of providing for an economic level playing field and resilience of service provision.

4. The national supervisory authorities of the Member State where the natural or legal person applying for the economic certificate has its principal place of business or, if that person has no principal place of business, where it has its place of residence or place of establishment, shall be responsible for the tasks set out in this Article in respect of the economic certificates. In the case of provision of air navigation services in an airspace falling under the responsibility of two or more Member States, the national supervisory authorities responsible shall be those specified in accordance with Article 5(4).

5. For the purpose of paragraph 1, the national supervisory authorities shall:

(a) receive and assess the applications made to them, and, where applicable, issue or renew economic certificates;

(b) perform oversight of holders of economic certificates.

6. The Commission shall adopt, in accordance with the examination procedure referred to in Article 37(3), implementing rules regarding detailed requirements on financial robustness, in particular financial strength and financial resilience, as well as in respect of liability and insurance cover. In order to ensure the uniform implementation of and compliance with paragraphs (1), (4) and (5) of this Article, the Commission shall adopt implementing acts, in accordance with the examination procedure referred to in Article 37(3), laying down detailed provisions concerning the rules and procedures for certification and for conducting the investigations, inspections, audits and other monitoring activities necessary to ensure effective oversight by the national supervisory authority of the entities subject to this Regulation.

↓ 550/2004

~~3. National supervisory authorities shall issue certificates to air navigation service providers where they comply with the common requirements referred to in Article 6. Certificates may be issued individually for each type of air navigation service as defined in Article 2 of the framework Regulation, or for a bundle of such services, *inter alia*, where a provider of air traffic services, whatever its legal status, operates and maintains its own communication, navigation and surveillance systems. The certificates shall be checked on a regular basis.~~

~~4. Certificates shall specify the rights and obligations of air navigation service providers, including non-discriminatory access to services for airspace users, with particular regard to safety. Certification may be subject only to the conditions set out in Annex II. Such conditions shall be objectively justified, non-discriminatory, proportionate and transparent.~~

~~5. Notwithstanding paragraph 1, Member States may allow the provision of air navigation services in all or part of the airspace under their responsibility without certification in cases where the provider of such services offers them primarily to aircraft movements other than general air traffic. In those cases, the Member State concerned shall inform the Commission and the other Member States of its decision and of the measures taken to ensure maximum compliance with the common requirements.~~

↓ 1070/2009 Art. 2.3

~~7. National supervisory authorities shall monitor compliance with the common requirements and with the conditions attached to the certificates. Details of such monitoring shall be included in the annual reports to be submitted by Member States pursuant to Article 12(1) of the framework Regulation. If a national supervisory authority finds that the holder of a certificate no longer satisfies such requirements or conditions, it shall take appropriate measures while ensuring continuity of services on condition that safety is not compromised. Such measures may include the revocation of the certificate.~~

↓ 550/2004

~~8. A Member State shall recognise any certificate issued in another Member State in accordance with this Article.~~

~~9. In exceptional circumstances, Member States may postpone compliance with this Article beyond the date resulting from Article 19(2) by six months. Member States shall notify the Commission of such postponement, giving their reasons therefor.~~

↓ 1070/2009 Art. 2.4

⇨ new

Article 7~~8~~

Designation of air traffic service providers

1. Member States shall ensure the provision of air traffic services on an exclusive basis within specific airspace blocks in respect of the airspace under their responsibility. For this purpose, Member States shall ~~designate an air traffic service provider holding a valid certificate in the Community.~~ ⇨ individually or collectively, designate one or more air traffic service provider(s). The air traffic service providers shall fulfill the following conditions: ⇦

⇩ new

(a) they shall hold a valid certificate or a valid declaration as referred to in Article 41 of Regulation (EU) 2018/1139 and an economic certificate in accordance with Article 6(1).

(b) they shall comply with the national security and defence requirements.

Each decision to designate an air traffic service provider shall be valid for a maximum of ten years. Member States may decide to renew the designation of an air traffic service provider.

🡻 1070/2009 Art. 2.4 (adapted)

⇨ new

2. ~~For the provision of cross-border services, Member States shall ensure that compliance with this Article and Article 18 10(3) is not prevented by their national legal system requiring that air traffic service providers providing services in the airspace under the responsibility of that Member State~~ ⇨ The designation of the air traffic service providers shall not be subject to any condition requiring those providers to ⇦ :

(a) be owned directly or through a majority holding by ~~that~~ ⌦ the designating ⌫ Member State or its nationals;

(b) have their principal place of operation or registered office in the territory of ~~that~~ ⌦ the designating ⌫ Member State; ~~or~~

(c) use only facilities in ~~that~~ ⌦ the designating ⌫ Member State.

3. Member States shall ~~define~~ ⇨ specify ⇦ the rights and obligations to be met by the ~~designated~~ air traffic service providers ⇨ , designated individually or jointly. ⇦ The obligations ~~may~~ ⇨ shall ⇦ include conditions for ~~the timely supply of~~ ⌦ making available ⌫ relevant ~~information~~⌦ data ⌫ enabling all aircraft movements ⌦ to be identified ⌫ in the airspace under their responsibility~~to be identified~~.

🡻 1070/2009 Art. 2.4

~~4. Member States shall have discretionary powers in choosing an air traffic service provider, on condition that the latter fulfils the requirements and conditions referred to in Articles 6 and 7.~~

~~5. In respect of functional airspace blocks established in accordance with Article 16 9a that extend across the airspace under the responsibility of more than one Member State, the Member States concerned shall jointly designate, in accordance with paragraph 1 of this~~

~~Article, one or more air traffic service providers, at least one month before implementation of the airspace block.~~

~~4~~6. Member States shall inform the Commission and other Member States immediately of any decision within the framework of this Article regarding the designation of air traffic service providers within specific airspace blocks in respect of the airspace under their responsibility.

⇩ new

Article 8

Conditions regarding the provision of CNS, AIS, ADS, MET and terminal air traffic services

1. Where this enables cost-efficiency gains to the benefit of airspace users, air traffic service providers may decide to procure CNS, AIS, ADS or MET services under market conditions.

Where this enables cost-efficiency gains to the benefit of airspace users, Member States shall allow airport operators to procure terminal air traffic services for aerodrome control under market conditions.

In addition, where this enables cost-efficiency gains to the benefit of airspace users, Member States may allow airport operators or the national supervisory authority concerned to procure terminal air traffic services for approach control under market conditions.

2. Procurement of services under market conditions shall be on the basis of equal, non-discriminatory and transparent conditions in accordance with Union law including Treaty rules on competition. The tender procedures for the procurement of the services concerned shall be designed so as to enable the effective participation of competing providers in these procedures including through regular reopening of competition.

3. Member States shall take all necessary measures to ensure that the provision of *en route* air traffic services is separated in terms of organisation from the provision of CNS, AIS, ADS, MET and terminal air traffic services and that the requirement concerning the separation of accounts referred to in Article 25(3) is respected.

4. A provider of CNS, AIS, ADS, MET or terminal air traffic services may only be selected to provide services in a Member State, when:

(a) it is certified in accordance with Article 6(1) and 6(2);

(b) its principal place of business is located in the territory of a Member State;

(c) Member States or nationals of Member States own more than 50% of the service provider and effectively control it, whether directly or indirectly through one or more intermediate undertakings, except as provided for in an agreement with a third country to which the Union is a party; and

(d) the service provider fulfils national security and defence requirements.

5. Articles 14, 17 and 19 to 22 shall not apply to the terminal air traffic service providers designated as a result of a procurement procedure in accordance with the second and third subparagraphs of paragraph 1. Those terminal air traffic service providers shall provide data on the performance of air navigation services in the key performance areas of safety, the environment, capacity and cost-efficiency to national supervisory authority and the Agency acting as PRB for monitoring purposes.

6. National supervisory authorities shall ensure that procurement by air traffic service providers and airport operators as referred to in paragraph 1 complies with paragraph 2, and where necessary shall apply corrective measures. In the case of terminal air traffic services, they shall be responsible for approving tender specifications for terminal air traffic services, which shall include requirements on service quality. The national supervisory authorities shall refer to the national competition authority referred to in Article 11 of Council Regulation (EC) No 1/2003 matters relating to the application of competition rules.

Article 9

Provision of common information services

1. Where common information services are provided, the data disseminated shall present the integrity and quality necessary to enable the safe provision of services for the management of traffic of unmanned aircraft.

2. The price for common information services shall be based on the fixed and variable costs of providing the service concerned and may, in addition, include a mark-up reflecting an appropriate risk-return trade-off.

The costs referred to in the first subparagraph shall be set out in an account separate from the accounts for any other activities of the operator concerned and shall be made publicly available.

3. The common information service provider shall set the price in accordance with paragraph 2, subject to assessment and approval by the national supervisory authority concerned.

4. As far as operations in specific volumes of airspace designated by the Member States for unmanned aircraft operations are concerned, relevant operational data shall be made available in real-time by air navigation service providers. Common information service providers shall use those data only for operational purposes of the services they provide. Access to relevant operational data shall be granted to common information service providers, on a non-discriminatory basis, without prejudice to security or defence policy interests.

Prices for access to such data shall be based on the marginal cost of making the data available.

↓ 550/2004

~~*Article 9*~~

~~**Designation of providers of meteorological services**~~

~~1. Member States may designate a provider of meteorological services to supply all or part of meteorological data on an exclusive basis in all or part of the airspace under their responsibility, taking into account safety considerations.~~

~~2. Member States shall inform the Commission and other Member States without delay of any decision within the framework of this Article regarding the designation of a provider of meteorological services.~~

🡻 1070/2009 Art. 1.5 (adapted)

⇨ new

Article *10~~11~~*

Performance scheme

1. To improve the performance of air navigation services and network functions in the ~~s~~Single European ~~s~~Sky, a performance scheme for air navigation services and network functions shall ~~be set up~~ ⇨ apply in accordance with this Article and Articles 11 to 18. ⇦ ~~It shall include:~~

2. The performance scheme shall be implemented over reference periods, which shall be a minimum of two years and a maximum of five years. The performance scheme shall include:

(a) ~~Community~~ ⌦ Union ⌫ -wide performance targets ~~on~~ ⌦ in ⌫ the key performance areas of ~~safety,~~ the environment, capacity and cost-efficiency ⇨ for each reference period ⇦ ;

(b) ~~national~~ ⌦ performance ⌫ plans ~~or plans for functional airspace blocks,~~ including ⇨ binding ⇦ performance targets~~,~~ ~~ensuring consistency with the Community -wide performance targets~~ ⇨ in the key performance areas mentioned in point (a) for each reference period ⇦ ; ~~and~~

(c) periodic review, monitoring and benchmarking of ~~the~~ performance ~~of air navigation services and network functions~~ ⇨ in the key performance areas of safety, the environment, capacity and cost-efficiency ⇦ .~~;~~

The Commission may add additional key performance areas for performance target setting or monitoring purposes, where necessary to improve performance.

~~2. In accordance with the regulatory procedure referred to in Article 5(3), the Commission may designate Eurocontrol or another impartial and competent body to act as a 'performance review body'. The role of the performance review body shall be to assist the Commission, in coordination with the national supervisory authorities, and to assist the national supervisory authorities on request in the implementation of the performance scheme referred to in paragraph 1. The Commission shall ensure that the performance review body acts independently when carrying out the tasks entrusted to it by the Commission.~~

~~3. (a) The Community -wide performance targets for the air traffic management network shall be adopted by the Commission in accordance with the regulatory procedure referred to in Article after taking into account the relevant inputs from national supervisory authorities at national level or at the level of functional airspace blocks.~~

~~(b) The national or functional airspace block plans referred to in point (b) of paragraph 1 shall be drawn up by national supervisory authorities and adopted by the Member State(s). These plans shall include binding national targets or targets at the level of functional airspace blocks and an appropriate incentive scheme as adopted by the Member State(s). Drafting of the plans shall be subject to consultation with air navigation service providers, airspace users' representatives, and, where relevant, airport operators and airport coordinators.~~

~~(c) The consistency of the national or functional airspace block targets with the Communitywide and performance targets shall be assessed by the Commission using the assessment criteria referred to in point (d) of paragraph 6.~~

~~In the event that the Commission identifies that one or more national or functional airspace block targets do not meet the assessment criteria, it may decide, in accordance with the advisory procedure referred to in Article 5(2), to issue a recommendation that the national supervisory authorities concerned propose revised performance target(s). The Member State(s) concerned shall adopt revised performance targets and appropriate measures which shall be notified to the Commission in due time.~~

~~Where the Commission finds that the revised performance targets and appropriate measures are not adequate, it may decide, in accordance with the regulatory procedure referred to in Article 5(3), that the Member States concerned shall take corrective measures.~~

~~Alternatively, the Commission may decide, with adequate supporting evidence, to revise the Community -wide performance targets in accordance with the regulatory procedure referred to in Article 5(3).~~

~~(d) The reference period for the performance scheme, referred to in paragraph 1, shall cover a minimum of three years and a maximum of five years. During this period, in the event that the national or functional airspace block targets are not met, the Member States and/or the national supervisory authorities shall apply the appropriate measures they have defined. The first reference period shall cover the first three years following the adoption of the implementing rules referred to in paragraph 6.~~

~~(e) The Commission shall carry out regular assessments of the achievement of the performance targets and present the results to the Single Sky Committee.~~

3. ~~The following procedures shall apply to the performance scheme referred to in paragraph 1~~ ⌧ Points (a), (b) and (c) of paragraph 2 shall be based on ⌫ :

(a) the collection, validation, examination, evaluation and dissemination of relevant data related to the performance of air navigation services and network functions from all relevant parties, including air navigation service providers, airspace users, airport operators, national supervisory authorities, ⇨ national competent authorities, ⇦ Member States ⇨ , the Agency, the Network Manager ⇦ and Eurocontrol;

⇩ new

(b) key performance indicators for target setting in the key performance areas of the environment, capacity and cost-efficiency;

(c) indicators for monitoring performance in the key performance areas of safety, the environment, capacity and cost-efficiency;

(d) a methodology for the development of performance plans and of performance targets for air navigation services, and methodology for the development of the performance plan and performance targets for the network functions;

(e) the assessment of the draft performance plans and targets for air navigation services and network functions;

(f) monitoring of performance plans, including appropriate alert mechanisms for revision of performance plans and targets and for the revision of Union-wide performance targets in the course of a reference period;

(g) benchmarking of air navigation service providers;

(h) incentive schemes including for financial disincentives applicable where an air traffic service provider does not comply with the relevant binding performance targets during the reference period or where it has not implemented the relevant common projects referred to in Article 35. Such financial disincentives shall in particular take account of the deterioration in the level of service quality provided by that provider, as a result of not complying with the performance targets or not implementing the common projects, and the impact thereof on the network;

(i) risk sharing mechanisms in respect of traffic and costs;

(j) timetables for target setting, assessment of performance plans and targets, monitoring and benchmarking;

(k) a methodology for the allocation of costs common to *en route* and terminal air navigation services between the two categories of services;

(l) mechanisms to address unforeseeable and significant events which have a material impact on the implementation of the performance and charging schemes.

Article 11

Establishment of the Union-wide performance targets

1. The Commission shall adopt the Union-wide performance targets for *en route* air navigation services and for terminal air navigation services in the key performance areas of environment, capacity and cost-efficiency for each reference period, in accordance with the advisory procedure referred to in Article 37(2) and with paragraphs 2 to 3 of this Article. In conjunction with the Union-wide performance targets, the Commission may define complementary baseline values, breakdown values or benchmark groups, for the purpose of enabling the assessment and approval of draft performance plans in accordance with the criteria referred to in Article 13(3).

2. Union-wide performance targets referred to in paragraph 1 shall be defined on the basis of the following essential criteria:

(a) they shall drive gradual, continuous improvements in respect of the operational and economic performance of air navigation services;

(b) they shall be realistic and achievable during the reference period concerned, whilst fostering longer term structural and technological developments enabling the efficient, sustainable and resilient provision of air navigation services.

3. For the purposes of preparing its decisions on Union-wide performance targets, the Commission shall collect any necessary input from stakeholders. Upon request of the Commission, the Agency acting as PRB shall provide assistance to the Commission for the analysis and preparation of those decisions, by way of an opinion.

Article 12

Classification of *en route* and terminal air navigation services

1. Before the start of each reference period, each Member State shall notify to the Commission which air navigation services to be provided during that period in the airspace under their responsibility it intends to classify as *en route* air navigation services and as terminal air navigation services respectively. At the same time, each Member State shall notify the Commission of the designated air traffic service providers of those respective services.

2. In due time before the start of the relevant reference period, the Commission, shall adopt implementing decisions addressed to each Member State as to whether the intended classification of the services concerned complies with the criteria set out in points (28) and (55) of Article 2. Upon request of the Commission, the Agency acting as PRB shall provide assistance to the Commission for the analysis and preparation of those decisions, by way of an opinion.

3. Where a decision adopted under paragraph 2 finds that the intended classification does not comply with the criteria set out in points (28) and (55) of Article 2, the Member State concerned shall, having regard to that decision, submit a new notification whose terms comply with those criteria. The Commission shall take a decision on this notification in accordance with paragraph 2.

4. The designated air traffic service providers concerned shall base their draft performance plans for *en route* and terminal air navigation services on the classifications the Commission has found to be in compliance with the criteria set out in points (28) and (55) of Article 2. The Agency acting as PRB shall base itself on those same classifications when assessing the allocation of costs between *en route* and terminal air navigation services under Article 13(3).

Article 13

Performance plans and performance targets for *en route* air navigation services of designated air traffic service providers

1. The designated air traffic service providers for *en route* air traffic services shall, for each reference period, adopt draft performance plans in respect of all the *en route* air navigation services which they provide and, where applicable, procure from other providers.

The draft performance plans shall be adopted after the setting of Union-wide performance targets and before the start of the reference period concerned. They shall contain performance targets for *en route* air navigation services in the key performance areas of the environment, capacity and cost-efficiency, consistent with the Union-wide performance targets. Those draft performance plans shall take account of the European ATM Master Plan. The draft performance plans shall be made publicly available.

2. The draft performance plans for *en route* air navigation services referred to in paragraph 1 shall include relevant information provided by the Network Manager. Before adopting those draft plans, designated air traffic service providers shall consult airspace users' representatives and, where relevant, military authorities, airport operators and airport coordinators. The designated air traffic service providers shall also submit those plans to the national competent authority responsible for their certification, which shall verify the compliance with Regulation (EU) 2018/1139 and the delegated and implementing acts adopted on the basis thereof.

3. Draft performance plans for *en route* air navigation services shall contain performance targets for *en route* air navigation services that are consistent with the respective Union-wide

performance targets in all key performance areas and fulfil the additional conditions laid down in the third subparagraph.

Consistency of performance targets for *en route* air navigation service with Union-wide performance targets shall be established according to the following criteria:

(a) where breakdown values have been established in conjunction with Union-wide performance targets, comparison of the performance targets contained in the draft performance plan with those breakdown values;

(b) evaluation of performance improvements over time, for the reference period covered by the performance plan, and additionally for the overall period comprising both the preceding reference period and the reference period covered by the performance plan;

(c) comparison of the planned level of performance of the air traffic service provider concerned with other air traffic service providers being part of the same benchmark group.

In addition, the draft performance plan must comply with the following conditions:

(a) key assumptions applied as a basis for target setting and measures intended to achieve the targets during the reference period, including baseline values, traffic forecasts and economic assumptions used, must be accurate, adequate and coherent;

(b) the draft performance plan must be complete in terms of data and supporting material;

(c) cost bases for charges must comply with Article 20.

4. The allocation of costs between *en route* and terminal air navigation services shall be assessed by the Agency acting as PRB on the basis of the methodology referred to in Article 10(3)(k) and the classification of the different services as assessed by the Commission pursuant to Article 12.

5. The draft performance plans for *en route* air navigation services referred to in paragraph 1, including where relevant the allocation of costs between *en route* and terminal air navigation services, shall be submitted to the Agency acting as PRB for assessment and approval.

6. In the case of a designated air traffic service provider providing both *en route* air navigation services and terminal air navigation services, the Agency acting as PRB shall first assess the allocation of costs between the respective services in accordance with paragraph 4.

Where the Agency acting as PRB finds that the allocation of costs does not comply with the methodology or with the classification referred to in paragraph 4, the designated air traffic service provider concerned shall present a new draft performance plan complying with that methodology and with that classification.

Where the Agency acting as PRB finds that the allocation of costs complies with that methodology and with that classification, it shall take a decision to that effect, notifying the designated air traffic service provider and national supervisory authority concerned. The national supervisory authority shall be bound by the conclusions of that decision in respect of the allocation of costs for the purposes of the assessment of the draft performance plan for terminal air navigation services referred to in Article 14.

7. The Agency acting as PRB shall assess the performance targets for *en route* air navigation services and the performance plans according to the criteria and conditions set out in paragraph 3. Where paragraph 6 applies, this assessment shall take place after a decision on the allocation of costs has been taken in accordance with the fourth subparagraph of paragraph 6.

Where the Agency acting as PRB finds that the draft performance plan meets those criteria and conditions, it shall approve it.

Where the Agency acting as PRB finds that one or several performance targets for *en route* air navigation services are not consistent with the Union-wide performance targets or the performance plan does not meet the additional conditions set out in paragraph 3, it shall deny the approval.

8. Where the Agency acting as PRB has denied approval of a draft performance plan in accordance with paragraph 7, a revised draft performance plan shall be presented by the designated air traffic service provider concerned, including where necessary revised targets.

9. The Agency acting as PRB shall assess the revised draft performance plan referred to in paragraph 8 in accordance with the criteria and conditions set out in paragraph 3. Where a revised draft performance plan meets those criteria and conditions, the Agency acting as PRB shall approve it.

Where a revised draft performance plan does not meet those criteria and conditions, the Agency acting as PRB shall deny its approval and shall require the designated air traffic service provider to present a final draft performance plan.

Where the revised draft performance plan submitted in accordance with paragraph 8 is denied because it contains performance targets for *en route* air navigation services that are not consistent with the Union-wide performance targets, the Agency acting as PRB shall establish performance targets in consistency with the Union-wide performance targets for the designated air traffic service provider concerned, taking into account the findings made in the decision referred to in paragraph 7. The final draft performance plan to be presented by the designated air traffic service provider concerned shall include the performance targets thus established by the Agency acting as PRB, as well as the measures to achieve those targets.

Where approval of the revised draft performance plan submitted in accordance with paragraph 8 is denied only because it does not comply with the conditions set out in the third subparagraph of paragraph 3, the final draft performance plan to be presented by the designated air traffic service provider concerned shall include the performance targets contained in the draft performance plan and found to be consistent with the Union-wide performance targets by the Agency acting as PRB, and shall contain the amendments necessary in view of the conditions the Agency acting as PRB has found not being met.

Where approval of the revised draft performance plan submitted in accordance with paragraph 8 is denied because it contains performance targets for *en route* air navigation services that are not consistent with the Union-wide performance targets and because, in addition, it does not comply with the conditions set out in the third subparagraph of paragraph 3, the final draft performance plan to be presented by the designated air traffic service provider concerned shall include the performance targets established by the Agency acting as PRB in accordance with the third subparagraph and the measures to achieve those targets and shall and shall contain the amendments necessary in view of the conditions the Agency acting as PRB has found not being met.

10. Draft performance plans approved by the Agency acting as PRB shall be adopted by the designated air traffic service providers concerned as definitive plans, and shall be made publicly available.

11. The Agency acting as PRB shall issue regular reports, within the time limits referred to in the implementing acts to be adopted in accordance with Article 18, on the monitoring of performance of *en route* air navigation services and network functions, including regular assessments of the achievement of the *en route* Union-wide performance targets and of

performance targets for *en route* air navigation services for air traffic service providers and making the results of those assessments publicly available.

The designated air traffic service provider shall provide the information and data necessary for the monitoring of the performance of air navigation services. This shall include information and data related to actual costs and revenues. Where performance targets are not reached or the performance plan is not correctly implemented, the Agency acting as PRB shall issue decisions requiring corrective measures to be implemented by the air traffic service providers. These corrective measures may include, where objectively necessary, a requirement for an air traffic service provider to delegate the provision of the relevant services to another air traffic service provider. Where the performance targets continue to be missed, or where the performance plan continues to be incorrectly implemented or where corrective measures imposed are not or not properly applied, the Agency acting as PRB shall conduct an investigation and provide an opinion to the Commission in accordance with Article 24(2). The Commission may take action in accordance with Article 24(3).

Article 14

Performance plans and performance targets for terminal air navigation services of designated air traffic service providers

1. The designated air traffic service providers for terminal air traffic services shall, for each reference period, adopt draft performance plans in respect of all the terminal air navigation services which they provide and, where applicable, procure from other providers.

The draft performance plans shall be adopted after the setting of Union-wide performance targets and before the start of the reference period concerned. They shall contain performance targets for terminal air navigation services in the key performance areas of environment, capacity and cost-efficiency, consistent with the Union-wide performance targets. Those draft performance plans shall take account of the European ATM Master Plan. The draft performance plans shall be made publicly available.

2. The draft performance plans for terminal air navigation services referred to in paragraph 1 shall include relevant information provided by the Network Manager. Before adopting those draft plans, designated air traffic service providers shall consult airspace users' representatives and, where relevant, military authorities, airport operators and airport coordinators. The designated air traffic service providers shall also submit those plans to the national competent authority responsible for their certification, which shall verify the compliance with Regulation (EU) 2018/1139 and the delegated and implementing acts adopted on the basis thereof.

3. Draft performance plans for terminal air navigation services shall contain performance targets for terminal air navigation services that are consistent with the respective Union-wide performance targets in all key performance areas and fulfil the additional conditions laid down in the third subparagraph.

Consistency of performance targets for terminal air navigation service with Union-wide performance targets shall be established according to the following criteria:

(a) where breakdown values have been established in conjunction with Union-wide performance targets, comparison of the performance targets contained in the draft performance plan with those breakdown values;

(b) evaluation of performance improvements over time, for the reference period covered by the performance plan, and additionally for the overall period comprising both the preceding reference period and the reference period covered by the performance plan;

(c) comparison of the planned level of performance of the air traffic service provider concerned with other air traffic service providers being part of the same benchmark group.

In addition, the draft performance plan must comply with the following conditions:

(a) key assumptions applied as a basis for target setting and measures intended to achieve the targets during the reference period, including baseline values, traffic forecasts and economic assumptions used, must be accurate, adequate and coherent;

(b) the draft performance plan must be complete in terms of data and supporting material;

(c) cost bases for charges must comply with Article 20.

4. The draft performance plans for terminal air navigation services referred to in paragraph 1, shall be submitted to the national supervisory authority for assessment and approval.

5. In the case of a designated air traffic service provider providing both *en route* air navigation services and terminal air navigation services, the draft performance plan for terminal air navigation services to be submitted to the national supervisory authority shall be the plan subject to a positive decision on the allocation of costs taken by the Agency acting as PRB in accordance with the third subparagraph of Article 13(6).

6. The national supervisory authority shall assess the performance targets for terminal air navigation services and the performance plans according to the criteria and conditions set out in paragraph 3. Where paragraph 5 applies, the national supervisory authority shall base its assessment on the conclusions of the decision taken by the Agency acting as PRB in respect of the allocation of costs.

Where the national supervisory authority finds that the draft performance plan meets those criteria and conditions, it shall approve it.

Where the national supervisory authority finds that one or several performance targets for terminal air navigation services are not consistent with the Union-wide performance targets or the performance plan does not meet the additional conditions set out in paragraph 3, it shall deny the approval.

7. Where the national supervisory authority has denied approval of a draft performance plan in accordance with paragraph 6, a revised draft performance plan shall be presented by the designated air traffic service provider concerned, including where necessary revised targets.

8. The national supervisory authority shall assess the revised draft performance plan referred to in paragraph 7 in accordance with the criteria and conditions set out in paragraph 3. Where a revised draft performance plan meets those criteria and conditions, the national supervisory authority shall approve it.

Where a revised draft performance plan does not meet those criteria and conditions, the national supervisory authority shall deny its approval and shall require the designated air traffic service provider to present a final draft performance plan.

Where the revised draft performance plan submitted in accordance with paragraph 7 is denied because it contains performance targets for terminal air navigation services that are not consistent with the Union-wide performance targets, the national supervisory authority shall establish performance targets in consistency with the Union-wide performance targets for the designated air traffic service provider concerned, taking into account the findings made in the

decision referred to in paragraph 6. The final draft performance plan to be presented by the designated air traffic service provider concerned shall include the performance targets thus established by the national supervisory authority as well as the measures to achieve those targets.

Where approval of the revised draft performance plan submitted in accordance with paragraph 7 is denied only because it does not comply with the conditions set out in the third subparagraph of paragraph 3, the final draft performance plan to be presented by the designated air traffic service provider concerned shall include the performance targets contained in the draft performance plan and found to be consistent with the Union-wide performance targets by the national supervisory authority, and shall contain the amendments necessary in view of the conditions the national supervisory authority has found not being met.

Where approval of the revised draft performance plan submitted in accordance with paragraph 7 is denied because it contains performance targets for terminal air navigation services that are not consistent with the Union-wide performance targets and because, in addition, it does not comply with the conditions set out in the third subparagraph of paragraph 3, the final draft performance plan to be presented by the designated air traffic service provider concerned shall include the performance targets established by the national supervisory authority in accordance with the third subparagraph and the measures to achieve those targets and shall contain the amendments necessary in view of the conditions the national supervisory authority has found not being met.

9. Draft performance plans approved by the national supervisory authority shall be adopted by the designated air traffic service providers concerned as definitive plans, and shall be made publicly available.

10. The national supervisory authority concerned shall issue regular reports on the monitoring of performance of terminal air navigation services, including regular assessments of the achievement of the performance targets for terminal air navigation services for air traffic service providers and making the results of those assessments publicly available.

The designated air traffic service provider shall provide the information and data necessary for the monitoring of the performance of air navigation services. This shall include information and data related to actual costs and revenues.

Where performance targets are not reached or the performance plan is not correctly implemented, the national supervisory authority shall issue decisions requiring corrective measures to be implemented by the air traffic service providers. These corrective measures may include, where objectively necessary, a requirement for an air traffic service provider to delegate the provision of the relevant services to another air traffic service provider. Where the performance targets continue to be missed, or where the performance plan continues to be incorrectly implemented, or where corrective measures imposed are not or not properly applied, the national supervisory authority shall request the Agency acting as PRB to conduct an investigation in accordance with Article 24(2), and the Commission may take action in accordance with Article 24(3).

11. Member States shall ensure that decisions taken by the national supervisory authority pursuant to this Article are subject to judicial review.

12. Where the Agency acting as PRB carries out the tasks of a national supervisory authority in accordance with Article 3(8), the draft performance plans for terminal air navigation services shall be submitted to the Agency acting as PRB together with the draft performance plans for *en route* air navigation services. Where the Agency has taken a decision in respect of

the allocation of costs as referred to in the third subparagraph of Article 13(6), this decision shall be binding on it for the purposes of the assessment of the draft performance plans for terminal air navigation services.

Article 15

Role of the Agency acting as PRB as regards the monitoring of Union-wide performance targets for terminal air navigation services

1. The Agency acting as PRB shall on a regular basis establish a Union-wide overview of the performance of terminal air navigation services and of how it relates to Union-wide performance targets.

2. For the purpose of the preparation of the overview referred to in point 1, the national supervisory authorities shall notify their reports referred to in Article 14(10) to the Agency acting as PRB and shall provide any other information the Agency acting as PRB may request for those purposes.

Article 16

Network Performance Plan

1. The Network Manager shall, for each reference period, draw up a draft Network Performance Plan in respect of all the network functions which it delivers.

The draft Network Performance Plan shall be drawn up after the setting of Union-wide performance targets and before the start of the reference period concerned. It shall contain performance targets in the key performance areas of the environment, capacity and cost-efficiency.

2. The draft Network Performance Plan shall be submitted to the Agency acting as PRB and to the Commission.

The Agency acting as PRB shall, upon request from the Commission, deliver an opinion to the Commission on the draft Network Performance Plan based on the following essential criteria:

(a) consideration of performance improvements over time, for the reference period covered by the performance plan, and additionally for the timeframe comprising both the preceding reference period and the reference period covered by the performance plan;

(b) completeness of the draft Network Performance Plan in terms of data and supporting materials.

Where the Commission finds that the draft Network Performance Plan is complete and shows adequate performance improvements, it shall adopt the draft Network Performance Plan as a definitive plan. Otherwise, the Commission may request the Network Manager to submit a revised draft Network Performance Plan.

Article 17

Revision of performance targets and performance plans during a reference period

1. Where, during a reference period, Union-wide performance targets are no longer adequate, in light of significantly changed circumstances, and where the revision of targets is necessary

and proportionate, the Commission shall revise those Union-wide performance targets. Article 11 shall apply to such decision. Subsequent to such revision, designated air traffic service providers shall adopt new draft performance plans, to which Articles 13 and 14 shall apply. The Network Manager shall draw up a new draft Network Performance Plan, to which Article 16 shall apply.

2. The decision on the revised Union-wide performance targets referred to in paragraph 1 shall include transitional provisions for the time period until the definitive performance plans adopted pursuant to Article 13(6) and Article 14(6) become applicable.

3. Designated air traffic service providers may request permission from the Agency acting as PRB as regards *en route* air navigation services, or from national supervisory authority concerned as regards terminal air navigation services, to revise one or several performance targets during a reference period. Such a request can be made where alert thresholds are reached, or where the designated air traffic service providers demonstrate that the initial data, assumptions and rationales underpinning the performance targets are to a significant and lasting extent no longer accurate due to circumstances that were unforeseeable at the time of the adoption of the performance plan.

4. The Agency acting as PRB as regards *en route* air navigation services, or the national supervisory authority concerned as regards terminal air navigation services, shall authorise the designated air traffic service provider concerned to proceed with the intended revision only if it is necessary and proportionate, and where the revised performance targets ensure that consistency with the Union-wide performance targets is maintained. Where the revision has been authorised, designated air traffic service providers shall adopt new draft performance plans, in accordance with the procedures set out in Articles 13 and 14.

Article 18

Implementation of the performance scheme

For the implementation of the performance scheme, the Commission shall adopt detailed requirements and procedures in respect of Articles 10(3), 11, 12, 13, 14, 15, 16 as well as 17, in particular as regards the development of draft performance plans, the setting of performance targets, the criteria and conditions for their assessment, the methodology for allocation of costs between *en route* and terminal air navigation services, the monitoring of performance and issuance of corrective measures, and the timetables for all procedures. Those requirements and procedures shall be set out in an implementing act adopted in accordance with the advisory procedure referred to in Article 37(2).

↓ 1070/2009 Art. 1.

~~(b) selection of appropriate key performance areas on the basis of ICAO Document No 9854 'Global air traffic management operational concept', and consistent with those identified in the Performance Framework of the ATM Master Plan, including safety, the environment, capacity and cost-efficiency areas, adapted where necessary in order to take into account the specific needs of the Ssingle European Ssky and relevant objectives for these areas and definition of a limited set of key performance indicators for measuring performance;~~

~~(c) establishment of Community -wide performance targets that shall be defined taking into consideration inputs identified at national level or at the level of functional airspace blocks;~~

~~6. For the detailed functioning of the performance scheme, the Commission shall by 4 December 2011 and within a suitable time-frame with a view to meeting the relevant deadlines laid down in this Regulation, adopt implementing rules in accordance with the regulatory procedure referred to in Article 5(3). These implementing rules shall cover the following:~~

~~(c) criteria for the setting up by the national supervisory authorities of the national or functional airspace block performance plans, containing the national or functional airspace block performance targets and the incentive scheme. The performance plans shall:~~

~~(i) be based on the business plans of the air navigation service providers;~~

~~(ii) address all cost components of the national or functional airspace block cost base;~~

~~(iii) include binding performance targets consistent with the Community performance targets; (d) assessment of the national or functional airspace block performance targets on the basis of the national or functional airspace block plan; and~~

~~(e) monitoring of the national or functional airspace block performance plans, including appropriate alert mechanisms.; (d) criteria assess whether the national or functional airspace block targets are consistent with the Community -wide performance targets during the reference period and to support alert mechanisms;~~

~~(e) general principles for the setting up by Member States of the incentive scheme;~~

~~(f) principles for the application of a transitional mechanism necessary for the adaptation to the functioning of the performance scheme not exceeding 12 months following the adoption of the implementing rules.;~~

~~(b) the reference periods and intervals for the assessment of the achievement of performance targets and the setting of new targets;~~

~~(a) the content and timetables of the procedures referred to in paragraph 4;~~

↓ 1070/2009 Art. 1.5

~~5. The establishment of the performance scheme shall take into account that en route services, terminal services and network functions are different and should be treated accordingly, if necessary also for performance-measuring purposes.~~

↓ 550/2004 (adapted)

~~CHAPTER III~~

~~CHARGING SCHEMES~~

↓ 1070/2009 Art. 2.8

~~*Article 14*~~

~~General~~

~~In accordance with the requirements of Articles 15 and 16, the charging scheme for air navigation services shall contribute to greater transparency in the determination, imposition and enforcement of charges to airspace users and shall contribute to the cost-efficiency of providing air navigation services and to efficiency of flights, while maintaining an optimum safety level. This scheme shall also be consistent with Article 15 of the 1944 Chicago Convention on International Civil Aviation and with Eurocontrol's charging system for en-route charges.~~

↓ 1070/2009 Art. 2.9 (adapted)

Article 19~~15~~

Principles ⌦ for the charging scheme ⌫

⇩ new

1. Without prejudice to the possibility for Member States to finance the provision of air traffic services covered in this Article through public funds, charges for air navigation services shall be determined, imposed and enforced on airspace users.

2. Charges shall be based on the costs of air traffic service providers in respect of services and functions delivered for the benefit of airspace users over fixed reference periods as defined in Article 10(2). Those costs may include a reasonable return on assets to contribute towards necessary capital improvements.

3. Charges shall encourage the safe, efficient, effective and sustainable provision of air navigation services with a view to achieving a high level of safety and cost-efficiency and meeting the performance targets and they shall stimulate integrated service provision, whilst reducing the environmental impact of aviation.

4. Revenues from charges imposed on airspace users may result in financial surpluses or losses for air traffic service providers due to the application of the incentive schemes referred

to in point (h) of Article 10(3) and the risk sharing mechanisms referred to in point (i) of Article 10(3).

5. Revenues from charges imposed on airspace users in accordance with this Article shall not be used to finance services which are provided under market conditions in accordance with Article 8.

6. Financial data on determined costs, actual costs and revenues of designated air traffic service providers shall be reported to national supervisory authorities and the Agency acting as PRB and shall be made publicly available.

Article 20

Cost bases for charges

1. The cost bases for charges for *en route* air navigation services and charges for terminal air navigation services shall consist of the determined costs related to the provision of those services in the *en route* charging zone and terminal charging zone concerned, as established in the performance plans adopted in accordance with Articles 13 and 14.

2. The determined costs referred to in paragraph 1 shall include the costs of relevant facilities and services, appropriate amounts for interest on capital investment and depreciation of assets, as well as the costs of maintenance, operation, management and administration.

3. The determined costs referred to in paragraph 1 shall also include the following costs:

(a) costs incurred by the air traffic service providers for fees and charges paid to the Agency acting as PRB;

(b) costs or parts thereof incurred by the air traffic service providers, in relation to their oversight and certification by national supervisory authorities, unless other financial resources are used by Member States to cover such costs;

(c) costs incurred by the air traffic service providers in relation to the provision of air navigation services and network functions, including the tasks entrusted to the Network Manager, unless other financial resources are used by Member States to cover such costs.

4. Determined costs shall not include the costs of penalties imposed by Member States referred to in Article 42 nor the costs of any corrective measures referred to in Article 13(11) and Article 14(10).

5. Cross-subsidy shall not be allowed between *en route* air navigation services and terminal air navigation services. Costs that pertain to both *en route* air navigation services and terminal air navigation services shall be allocated in a proportional way between *en route* air navigation services and terminal air navigation services on the basis of a transparent methodology. Cross-subsidy shall be allowed between different air navigation services in either one of those two categories only when justified for objective reasons, subject to transparent identification in accordance with Article 25(3).

6. Designated air traffic service providers shall provide details of their cost base to the Agency acting as PRB, the national supervisory authorities, and the Commission. To this end, costs shall be broken down in line with the separation of accounts referred to in Article 25(3), and by distinguishing staff costs, operating costs other than staff costs, depreciation costs, cost of capital, costs incurred for fees and charges paid to the Agency acting as PRB, and exceptional costs.

Article 21

Setting of unit rates

1. Unit rates shall be set per calendar year and for each charging zone, on the basis of the determined costs and the traffic forecasts established in the performance plans as well as applicable adjustments deriving from previous years and other revenues.

2. Unit rates shall be set by the national supervisory authorities, after verification by the Agency acting as PRB that they comply with Article 19, Article 20 and with this Article. Where the Agency acting as PRB finds that a unit rate does not fulfill those requirements, the unit rate shall be reviewed accordingly by the national supervisory authority concerned. Where a unit rate continues to not fulfill those requirements, the Agency acting as PRB shall conduct an investigation and provide an opinion to the Commission in accordance with Article 24(2), and the Commission may take action in accordance with Article 24(3).

For charging purposes, and when congestion causes significant network problems including deterioration of environmental performance, the Commission may define, by way of an Implementing Regulation adopted in accordance with the examination procedure referred to in Article 37(3), a common unit rate for *en route* air navigation services across the Single European Sky airspace, and detailed rules and procedures for its application. The common unit rate referred to in the first subparagraph shall be calculated on the basis of a weighted average of the different unit rates of the air navigation service providers concerned. The proceeds of the common unit rate shall be reallocated so as to achieve revenue neutrality for those air traffic service providers concerned.

Article 22

Establishment of charges

1. Charges shall be levied on airspace users for the provision of air navigation services, under non-discriminatory conditions, taking into account the relative productive capacities of the different aircraft types concerned. When imposing charges on different airspace users for the use of the same service, no distinction shall be made in relation to the nationality or category of the user.

2. The charge for *en route* air navigation services for a given flight in a given *en route* charging zone shall be calculated on the basis of the unit rate established for that *en route* charging zone and the *en route* service units for that flight. The charge shall be made out of one or more variable components, each based on objective factors.

3. The charge for terminal air navigation services for a given flight in a given terminal charging zone shall be calculated on the basis of the unit rate established for that terminal charging zone and the terminal service units for that flight. For the purpose of calculating the charge for terminal air navigation services, the approach and departure of a flight shall count as a single flight. The charge shall be made out of one or more variable components, each based on objective factors.

4. Exemption of certain airspace users from air navigation charges, especially light aircraft and State aircraft, may be permitted, provided that the cost of such exemption is covered by other resources and is not passed on to other airspace users.

5. Charges shall be modulated to encourage air navigation service providers, airports and airspace users to support improvements in environmental performance, or service quality such

as increased use of sustainable alternative fuels, increased capacity, reduced delays and sustainable development, while maintaining an optimum safety level, in particular for implementing the European ATM Master Plan. The modulation shall consist of financial advantages or disadvantages and shall be revenue neutral for air traffic service providers.

Article 23

Implementation of the charging scheme

For the implementation of the charging scheme, the Commission shall adopt detailed requirements and procedures in respect of Articles 19, 20, 21 and 22 in particular regarding the cost bases and determined costs, the setting of unit rates, the incentives schemes and risk sharing mechanisms and the modulation of charges. Those requirements and procedures shall be set out in an implementing act adopted in accordance with the advisory procedure referred to in Article 37(2).

↓ 1070/2009 Art. 2.9

~~(a) the cost to be shared among airspace users shall be the determined 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,. Determined costs shall be the costs determined by the Member State at national level or at the level of functional airspace blocks either at the beginning of the reference period for each calendar year of the reference period referred to in Article 11 of the framework Regulation, or during the reference period, following appropriate adjustments applying the alert mechanisms set out in Article 11 of the framework Regulation;~~

~~(b) the costs to be taken into account in this context shall be those assessed in relation to the facilities and services provided for and implemented under the ICAO Regional Air Navigation Plan, European Region. They may also include costs incurred by national supervisory authorities and/or qualified entities, as well as other costs incurred by the relevant Member State and service provider in relation to the provision of air navigation services. They shall not include the costs of penalties imposed by Member States according to Article 9 of the framework Regulation nor the costs of any corrective measures imposed by Member States according to Article 11 of the framework Regulation;~~

~~(c) in respect of the functional airspace blocks and as part of their respective framework agreements, Member States shall make reasonable efforts to agree on common principles for charging policy;.~~

~~(d) the cost of different air navigation services shall be identified separately, as provided for in Article 12(3) ;~~

~~(e) cross-subsidy shall not be allowed between en-route services and terminal services. Costs that pertain to both terminal services and en-route services shall be allocated in a proportional way between en-route services and terminal services on the basis of a transparent methodology. Cross-subsidy shall be allowed between different air navigation services in either one of those two categories only when justified for objective reasons, subject to clear identification.~~

(f) transparency of the cost-base for charges shall be guaranteed. Implementing rules for the provision of information by the service providers shall be adopted in order to permit reviews of the provider's forecasts, actual costs and revenues. Information shall be regularly exchanged between the national supervisory authorities, service providers, airspace users, the Commission and Eurocontrol.

3. Member States shall comply with the following principles when setting charges in accordance with paragraph 2:

(a) charges shall be set for the availability of air navigation services under non-discriminatory conditions. When imposing charges on different airspace users for the use of the same service, no distinction shall be made in relation to the nationality or category of the user;

(b) exemption of certain users, especially light aircraft and State aircraft, may be permitted, provided that the cost of such exemption is not passed on to other users;

(c) charges shall be set per calendar year on the basis of the determined costs, or may be set under conditions established by Member States for determining the maximum level of the unit rate or of the revenue for each year over a period not exceeding five years;

(d) air navigation services may produce sufficient revenues to provide for a reasonable return on assets to contribute towards necessary capital improvements;

(e) charges shall reflect the cost of air navigation services and facilities made available to airspace users, taking into account the relative productive capacities of the different aircraft types concerned;

(f) charges shall encourage the safe, efficient, effective and sustainable provision of air navigation services with a view to achieving a high level of safety and cost-efficiency and meeting the performance targets and they shall stimulate integrated service provision, whilst reducing the environmental impact of aviation. To that end, and in relation to the national or functional airspace block performance plans, national supervisory authorities may set up mechanisms, including incentives consisting of financial advantages and disadvantages, to encourage air navigation service providers and/or airspace users to support improvements in the provision of air navigation services such as increased capacity, reduced delays and sustainable development, while maintaining an optimum safety level.

4. 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.

↓ 1070/2009 Art. 2.11

Article 15

Review of compliance

1. The Commission shall provide for the ongoing review of compliance with the principles and rules referred to in Articles 14 and 15, acting in cooperation with theMember States. The Commission shall endeavour to establish the necessary mechanisms for making use of Eurocontrol expertise and shall share the results of the review with the Member States, Eurocontrol and the airspace users' representatives.

2. At the request of one or more Member States that consider that the principles and rules referred to in Articles 14 and 15 have not been properly applied, or on its own initiative, the

~~Commission shall carry out an investigation into any allegation of non-compliance or non-application of the principles and/or rules concerned. Without prejudice to Article 18(1), the Commission shall share the results of the investigation with the Member States, Eurocontrol and the airspace users' representatives. Within two months of receipt of a request, after having heard the Member State concerned, and after consulting the Single Sky Committee in accordance with the advisory procedure referred to in Article 5(2) of the framework Regulation, the Commission shall take a decision on the application of Articles 14 and 15 of this Regulation and as to whether the practice concerned may continue.~~

~~3. The Commission shall address its decision to the Member States and inform the service provider thereof, in so far as it is legally 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.~~

⇩ new

Article 24

Review of compliance with the performance and charging schemes

1. The Commission shall regularly review the compliance with Articles 10 to 17 and 19 to 22 and the implementing acts referred to in Articles 18 and 23, by the air traffic service providers and the Member States, as the case may be. The Commission shall act in consultation with the Agency acting as PRB and with national supervisory authorities.

2. At the request of one or more Member States, of a national supervisory authority or of the Commission, the Agency acting as PRB shall carry out an investigation into any allegation of non-compliance as referred to in paragraph 1. Where it has indications of such non-compliance, the Agency acting as PRB may initiate an investigation on its own initiative. It shall conclude the investigation within four months of receipt of a request, after having heard the Member State, the national supervisory authority concerned and the designated air traffic service provider concerned. Without prejudice to Article 41(1), the Agency acting as PRB shall share the results of the investigation with the Member States concerned, the air traffic service providers concerned and the Commission.

3. The Commission may issue an opinion on whether Articles 10 to 17 and 19 to 22 and the implementing acts referred to in Articles 18 and 23 have been complied with by Member States and/or air traffic service providers and shall notify this opinion to the Member State or Member States and the air traffic service provider concerned.

🡻 550/2004 (adapted)

⇨ new

Article 25~~12~~

Transparency of accounts ⌦ of air navigation service providers ⌫

1. Air navigation service providers, ~~whatever~~⌦ independently of ⌫ their system of ownership or legal ~~form~~⌦ structures ⌫ , shall ⇨ annually ⇦ draw up~~,~~ ~~submit to audit~~ and publish their financial accounts. These accounts shall comply with the international

accounting standards adopted by the ~~Community~~ ⌦ Union ⌫. Where, owing to the legal status of the ⌦ air navigation ⌫ service provider, full compliance with the international accounting standards is not possible, the provider shall ~~endeavour to~~ achieve such compliance to the maximum possible extent.~~2. In all cases,~~ A~~a~~ir navigation service providers shall publish an annual report and regularly undergo an independent audit ⌦ for the accounts referred to in this paragraph ⌫ .

⇩ new

2. National supervisory authorities and the Agency acting as PRB shall have the right to access the accounts of the air navigation service providers under their supervision. Member States may decide to grant access to these accounts to other supervisory authorities.

🡻 1070/2009 Art. 2.7 (adapted)

⇨ new

3. ~~When providing a bundle of services,~~ A~~a~~ir navigation service providers shall ⇨ , in their internal accounting, keep separate accounts for each air navigation service ⇦ ~~identify and disclose the costs and income deriving from air navigation services, broken down in accordance with the charging scheme for air navigation services referred to in Article 14 and, where appropriate, shall keep consolidated accounts for other, non-air-navigation services,~~ as they would be required to do if ~~the~~ ⌦ these ⌫ services ~~in question~~ were ~~provided~~ ⌦ carried out ⌫ by separate undertakings ⇨ with a view to avoiding discrimination, cross-subsidisation and distortion of competition. An air navigation service provider shall also keep separate accounts for each activity where: ⇦

⇩ new

(a) it provides air navigation services procured in accordance with Article 8(1) and air navigation services not covered by that provision;

(b) it provides air navigation services and carries out other activities, of whatever kind, including common information services;

(c) it provides air navigation services in the Union and in third countries.

The determined costs, actual costs and revenues deriving from air navigation services shall be broken down into staff costs, operating costs other than staff costs, depreciation costs, cost of capital, costs incurred for fees and charges paid to Agency acting as PRB, and exceptional costs and they shall be made publicly available, subject to the protection of confidential information.

4. The financial data on costs and revenues reported in accordance with Article 19(6) and other information relevant for the calculation of unit rates shall be audited or verified by the national supervisory authority or an entity independent of the air navigation service provider concerned and approved by the national supervisory authority. The conclusions of the audit shall be made publicly available.

↓ 550/2004

~~4. Member States shall designate the competent authorities that shall have a right of access to the accounts of service providers that provide services within the airspace under their responsibility.~~

~~5. Member States may apply the transitional provisions of Article 9 of Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards[52] to air navigation service providers that fall within the scope of that regulation.~~

↓ 1070/2009 Art. 2.5

~~*Article 9a*~~

~~Functional airspace blocks~~

~~1. By 4 December 2012, Member States shall take all necessary measures in order to ensure the implementation of functional airspace blocks with a view to achieving the required capacity and efficiency of the air traffic management network within the Single European Sky and maintaining a high level of safety and contributing to the overall performance of the air transport system and reduced environmental impact.~~

~~3. Member States shall cooperate to the fullest extent possible with each other, in particular Member States establishing neighbouring functional airspace blocks, in order to ensure compliance with this provision. Where relevant, cooperation may also include third countries taking part in functional airspace blocks.~~

~~2. Functional airspace blocks shall, in particular:~~

~~(a) be supported by a safety case;~~

~~(b) enable optimum use of airspace, taking into account air traffic flows;~~

~~(c) ensure consistency with the European route network established in accordance with Article 6 of the airspace Regulation;~~

~~(d) be justified by their overall added value, including optimal use of technical and human resources, on the basis of cost-benefit analyses;~~

~~(e) ensure a smooth and flexible transfer of responsibility for air traffic control between air traffic service units;~~

~~(f) ensure compatibility between the different airspace configurations, optimising, inter alia, the current flight information regions;~~

~~(g) comply with conditions stemming from regional agreements concluded within the ICAO;~~

~~(h) respect regional agreements in existence on the date of entry into force of this Regulation, in particular those involving European third countries; and~~

[52] ~~OJ L 243, 11.9.2002, p. 1.~~

~~(i) facilitate consistency with Community-wide performance targets.~~

~~3. A functional airspace block shall only be established by mutual agreement between all the Member States and, where appropriate, third countries who have responsibility for any part of the airspace included in the functional airspace block.~~

~~Before notifying the Commission of the establishment of a functional airspace block, the Member State(s) concerned shall provide the Commission, the other Member States and other interested parties with adequate information and give them an opportunity to submit their observations.~~

~~4. Where a functional airspace block relates to airspace that is wholly or partly under the responsibility of two or more Member States, the agreement by which the functional airspace block is established shall contain the necessary provisions concerning the way in which the block can be modified and the way in which a Member State can withdraw from the block, including transitional arrangements.~~

~~5. Where difficulties arise between two or more Member States with regard to a cross-border functional airspace block that concerns airspace under their responsibility, the Member States concerned may jointly bring the matter to the Single Sky Committee for an opinion. The opinion shall be addressed to the Member States concerned. Without prejudice to paragraph 63, the Member States shall take that opinion into account in order to find a solution.~~

~~6. After having received the notifications by Member States of the agreements and declarations referred to in paragraphs 3 and 4 the Commission shall assess the fulfilment by each functional airspace block of the requirements set out in paragraph 2 and present the results to the Single Sky Committee for discussion. If the Commission finds that one or more functional airspace blocks do not fulfil the requirements it shall engage in a dialogue with the Member States concerned with the aim of reaching a consensus on the measures necessary to rectify the situation.~~

~~7. Without prejudice to paragraph 6, the agreements and declarations referred to in paragraphs 3 and shall be notified to the Commission for publication in the *Official Journal of the European Union*. Such publication shall specify the date of entry into force of the relevant decision.~~

~~8. Guidance material for the establishment and modification of functional airspace blocks shall be developed by 4 December 2010 in accordance with the advisory procedure referred to in Article 5(2) of the framework Regulation.~~

~~9. 1 The Commission shall, by 4 December 2011 and in accordance with the examination regulatory procedure referred to in Article 5(3) of the framework Regulation, adopt implementing rules regarding the information to be provided by the Member State(s) concerned before establishing and modifying a functional airspace block in accordance with paragraph 3 of this Article.~~

~~*Article 9b*~~

~~**Functional airspace blocks system coordinator**~~

~~1. In order to facilitate the establishment of the functional airspace blocks, the Commission may designate a natural person as functional airspace blocks system coordinator (the Coordinator). The Commission shall act in accordance with the regulatory procedure referred to in Article 5(3) of the framework Regulation.~~

~~2. Without prejudice to Article 9a(5) the Coordinator shall facilitate at the request of all Member States concerned and, where appropriate, third countries taking part in the same functional airspace block, overcoming of difficulties in their negotiation process in order to speed up the establishment of functional airspace blocks. The Coordinator shall act on the basis of a mandate from all Member States concerned and, where appropriate, third countries taking part in the same functional airspace block.~~

~~3. The Coordinator shall act impartially in particular with regard to Member States, third countries, the Commission and the stakeholders.~~

~~4. The Coordinator shall not disclose any information obtained whilst performing his function except where authorised to do so by the Member State(s) and, where appropriate, third countries concerned.~~

~~5. The Coordinator shall report to the Commission, to the Single Sky Committee and to the European Parliament every three months after his designation. The report shall include a summary of negotiations and their results.~~

~~6. The remit of the Coordinator shall expire when the last functional airspace block agreement is signed but no later than 4 December 2012.~~

↓ 1070/2009 Art. 3.6 (adapted)
⇨ new

CHAPTER IV

⌦ NETWORK MANAGEMENT ⌫

Article 26~~6~~

Network ⌦ functions ⌫ ~~management and design~~

1. The air traffic management ~~(ATM)~~ network functions shall ~~allow optimum~~ ⇨ ensure the sustainable and efficient ⇦ use of the airspace ⇨ and of scarce resources. ⇦ ~~and~~ ⌦ They shall also ⌫ ensure that airspace users can operate ~~preferred~~ ⇨ environmentally optimal ⇦ trajectories, while allowing maximum access to airspace and air navigation services. Those network functions ⇨ , enumerated in paragraphs 2 and 3, ⇦ shall ⇨ support the achievement of the Union-wide performance targets and shall be based on operational requirements ⇦ ~~be aimed at supporting initiatives at national level and at the level of functional airspace blocks and shall be executed in a manner which respects the separation of regulatory and operational tasks~~.

2. ~~In order to achieve the objectives referred to in paragraph 1 and without prejudice to the responsibilities of the Member States with regard to national routes and airspace structures, the Commission shall ensure that~~ T~~t~~he ~~following~~ ⌦ network ⌫ functions ⌦ referred to in paragraph 1 ⌫ include the following~~carried out~~:

(a) the design ⇨ and management ⇦ of the European ~~route network~~ ⇨ airspace structures⇦ ;

⇨ (b) air traffic flow management; ⇦

(c~~b~~) the coordination of scarce resources within aviation frequency bands used by general air traffic, in particular radio frequencies as well as coordination of radar transponder codes.

⇩ new

3. The network functions referred to in paragraph 1 also include the following:

(a) optimisation of airspace design for the network and facilitation of delegation of air traffic services provision through co-operation with the air traffic service providers and Member State authorities;

(b) management of the delivery of air traffic control capacity in the network as set out in the binding Network Operations Plan (NOP);

(c) function for coordination and support in case of network crisis.

(d) air traffic flow and capacity management;

(e) the management of the planning, monitoring and coordination of implementation activities of the deployment of infrastructure in the European ATM network, in accordance with the European ATM Master Plan, taking into account operational needs and associated operational procedures;

(f) the monitoring of the functioning of the European ATM network infrastructure.

🡻 1070/2009 Art. 3.6

4. The functions listed in ~~the first this subparagraph~~ paragraphs 2 and 3 shall not involve the adoption of binding measures of a general scope or the exercise of political discretion. ~~They shall take into account proposals established at national level and at the level of functional airspace blocks.~~ They shall be performed in coordination with military authorities in accordance with agreed procedures concerning the flexible use of airspace.

⇩ new

5. The Commission shall be empowered to adopt delegated acts in accordance with Article 36 to amend this Regulation in order to add functions to the ones listed in paragraphs 2 and 3, where necessary for the functioning and performance of the network.

🡻 1070/2009 Art. 3.6 (adapted)

Article 27

⌦ **The Network Manager** ⌫

⇩ new

1. In order to achieve the objectives referred to in Article 26, the Commission, supported by the Agency where relevant, shall ensure that the Network Manager contributes to the execution of the network functions set out in Article 26, by carrying out the tasks referred to in paragraph 4 .

🡻 1070/2009 Art. 3.6 (adapted)

⇨ new

2. The Commission may~~, after consultation of the Single Sky Committee and in conformity with the implementing rules referred to in paragraph 4, entrust to~~ ⌦ appoint ⌫ ~~Eurocontrol, or~~ an~~other~~ impartial and competent body~~,~~ ⇨ to carry out ⇦ the tasks ~~necessary for the execution of the functions listed in the first subparagraph~~ ⇨ of the Network Manager ⇦ . To this end, the Commission shall adopt an implementing act in accordance with the examination procedure referred to in Article 37(3). This appointment Decision shall include the terms and conditions of the appointment, including the financing of the Network Manager.

3. ⇨ The tasks of the Network Manager ⇦ ~~Theose tasks~~ shall be executed in an ⇨ independent, ⇦ impartial and cost ~~effective~~ ⇨ efficient ⇦ manner ~~and performed on behalf on Member States and stakeholders~~. They shall be subject to appropriate governance, which ~~recognises~~ ⌦ shall recognise ⌫ ~~the~~ separate accountabilities for service provision and regulation ⇨ where the competent body designated as the Network Manager also has regulatory functions. ⇦ ⇨ In the execution of its tasks, the Network Manager shall take ⇦ ~~taking~~ into consideration the needs of the whole ATM network and ~~with the full~~ ⇨ shall fully

involve ⇦ ~~involvement of~~ the airspace users, ~~and~~ air navigation service providers ⇨, aerodrome operators and the military. ⇦

⇩ new

4. The Network Manager shall contribute to the execution of the network functions through support measures aimed at safe and efficient planning and operations of the network under normal and crisis conditions and through measures aimed at the continuous improvement of network operations in the Single European Sky and the overall performance of the network, especially regarding the implementation of the performance scheme. The action taken by the Network Manager shall take account of the need to fully integrate the airports in the network.

5. The Network Manager shall cooperate closely with the Agency acting as PRB in order to ensure that the performance targets referred to in Article 10 are adequately reflected in the capacity to be delivered by individual air navigation service providers and agreed between the Network Manager and those air navigation service providers in the Network Operations Plan.

6. The Network Manager shall:

(a) decide on individual measures to implement the network functions and to support the effective implementation of the binding Network Operations Plan and the achievement of the binding performance targets;

(b) advise the Commission and provide relevant information to the Agency acting as PRB on the deployment of the ATM network infrastructure in accordance with the European ATM Master Plan, in particular to identify investments necessary for the network.

7. The Network Manager shall take decisions through a cooperative decision-making process. Parties to the cooperative decision-making process shall act to the maximum extent possible with a view to improving the functioning and performance of the network. The cooperative decision-making process shall promote the interest of the network.

🡻 1070/2009 Art. 3.6

~~3. The Commission may add to the list of the functions in paragraph 2 after proper consultation of industry stakeholders. Those measures, designed to amend non-essential elements of this Regulation by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 5(4) of the framework Regulation.~~

⇩ new

8. By way of implementing acts adopted in accordance with the examination procedure referred to in Article 37(3), the Commission shall establish detailed rules for the execution of the network functions, the tasks of the Network Manager, governance mechanisms including decision-making processes and crisis management.

🡻 1070/2009 Art. 3.6

~~4. Detailed rules for the implementation of the measures referred to in this Article, except for those referred to in paragraphs 6 to 9, shall be adopted in accordance with the regulatory procedure referred to in Article 5(3) of the framework Regulation. Those implementing rules shall address in particular:~~

~~(a) the coordination and harmonisation of processes and procedures to enhance the efficiency of aeronautical frequency management including the development of principles and criteria;~~

~~(b) the central function to coordinate the early identification and resolution of frequency needs in the bands allocated to European general air traffic to support the design and operation of European aviation network;~~

~~(c) additional network functions as defined in the ATM Master Plan;~~

~~(d) detailed arrangements for cooperative decision-making between the Member States, the air navigation service providers and the network management function for the tasks referred to in paragraph 2;~~

~~(e) arrangements for consultation of the relevant stakeholders in the decision-making process both at national and European levels; and~~

~~(f) within the radio spectrum allocated to general air traffic by the International Telecommunication Union, a division of tasks and responsibilities between the network management function and national frequency managers, ensuring that the national frequency management functions continue to perform those frequency assignments that have no impact on the network. For those cases which do have an impact on the network, the national frequency managers shall cooperate with those responsible for the network management function to optimise the use of frequencies.~~

⇩ new

9. Aspects of design of airspace structures other than those referred to in paragraphs 2 and 3 of Article 26 shall be addressed by Member States. In this regard, Member States shall take into account air traffic demands, seasonality and complexity of air traffic and of performance plans. Before deciding on those aspects, they shall consult airspace users concerned or groups representing such airspace users and military authorities as appropriate.

↓ 1070/2009 Art. 3.6

~~5. Aspects of airspace design other than those referred to in paragraph 2 shall be dealt with at national level or at the level of functional airspace blocks. This design process shall take into account traffic demands and complexity, national or functional airspace block performance plans and shall include full consultation of relevant airspace users or relevant groups representing airspace users and military authorities as appropriate.~~

~~6. Member States shall entrust Eurocontrol or another impartial and competent body with the performance of air traffic flow management, subject to appropriate oversight arrangements.~~

~~7. Implementing rules for air traffic flow management, including the necessary oversight arrangements, shall be developed in accordance with the advisory procedure referred to in Article 5(2) of the framework Regulation and adopted in accordance with the regulatory procedure referred to in Article 5(3) of the framework Regulation, with a view to optimising available capacity in the use of airspace and enhancing air traffic flow management processes. These rules shall be based on transparency and efficiency, ensuring that capacity is provided in a flexible and timely manner, consistent with the recommendations of the ICAO Regional Air Navigation Plan, European Region.~~

~~8. The implementing rules for air traffic flow management shall support operational decisions by air navigation service providers, airport operators and airspace users and shall cover the following areas:~~

~~(a) flight planning;~~

~~(b) use of available airspace capacity during all phases of flight, including slot assignment; and~~

~~(c) use of routings by general air traffic, including:~~

~~– the creation of a single publication for route and traffic orientation,~~

~~– options for diversion of general air traffic from congested areas, and~~

~~– priority rules regarding access to airspace for general air traffic, particularly during periods of congestion and crisis.~~

~~9. When developing and adopting the implementing rules the Commission shall, as appropriate and without prejudice to safety, take into account consistency between flight plans and airport slots and the necessary coordination with adjacent regions.~~

⇩ new

Article 28

Transparency of accounts of the Network Manager

1. The Network Manager shall draw up, submit to and publish its financial accounts. Those accounts shall comply with the international accounting standards adopted by the Union. Where, due to the legal status of the Network Manager, full compliance with the international accounting standards is not possible, the Network Manager shall achieve such compliance to the maximum possible extent.

2. The Network Manager shall publish an annual report and regularly undergo an independent audit.

🡻 550/2004

~~*Article 10*~~

~~Relations between service providers~~

~~1. Air navigation service providers may avail themselves of the services of other service providers that have been certified in the Community.~~

~~2. 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 each provider and allowing for the exchange of operational data between all service providers in so far as general air traffic is concerned. Those arrangements shall be notified to the national supervisory authority or authorities concerned.~~

~~3. In cases involving the provision of air traffic services, the approval of the Member States concerned shall be required. In cases involving the provision of meteorological services, the approval of the Member States concerned shall be required if they have designated a provider on an exclusive basis in accordance with Article 9(1).~~

⇩ new

Article 29

Relations with stakeholders

The air traffic service providers shall establish consultation mechanisms to consult the relevant airspace users and aerodrome operators on all major issues related to services provided, including relevant changes to airspace configurations**,** or strategic investments which have a relevant impact on air traffic management and air navigation service provision and/or charges. The airspace users shall also be involved in the process of approving strategic investment plans. The Commission shall adopt measures detailing the modalities of the consultation and of the involvement of airspace users in approving investment plans. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 37 (3).

🡻 1070/2009 Art. 2.6 (adapted)

⇨ new

Article 30~~11~~

Relations with military authorities

Member States shall, within the context of the common transport policy,~~take the necessary steps to~~ ensure that written agreements between the competent civil and military authorities or

equivalent legal arrangements are established or renewed in respect of the management of specific airspace blocks ⇨ and notify the Commission thereof ⇦.

🡻 550/2004

~~Article 13~~

~~**Access to and protection of data**~~

~~1. In so far as general air traffic is concerned, relevant operational data shall be exchanged in real-time between all air navigation service providers, airspace users and airports, to facilitate their operational needs. The data shall be used only for operational purposes.~~

~~2. Access to relevant operational data shall be granted to appropriate authorities, certified air navigation service providers, airspace users and airports on a non-discriminatory basis.3. Certified service providers, airspace users and airports shall establish standard conditions of access to their relevant operational data other than those referred to in paragraph 1. National supervisory authorities shall approve such standard conditions. Detailed rules relating to such conditions shall be established, where appropriate, in accordance with the procedure referred to in Article 5(3) of the framework Regulation.~~

⇩ new

Article 31

Availability of and access to operational data for general air traffic

1. With regard to general air traffic, relevant operational data shall be made available in real-time, on a non-discriminatory basis and without prejudice to security or defence policy interests, by all air navigation service providers, airspace users, airports, and the Network Manager, including on cross-border basis and on a Union-wide basis. Such availability shall be to the benefit of certified or declared air traffic service providers, entities having a proven interest in considering the provision of air navigation services, airspace users and airports as well as the Network Manager. The data shall be used only for operational purposes.

2. Prices for the service referred to in paragraph 1 shall be based on the marginal cost of making the data available.

3. Access to relevant operational data as referred to in paragraph 1 shall be granted to the authorities in charge of safety oversight, performance oversight and network oversight, including the Agency.

4. The Commission may lay down the detailed requirements for the making available of and the access to data in accordance with paragraphs 1 and 3 and the methodology to set the prices as referred to in paragraph 2. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 37(3).

↓ 551/2004 (adapted)

CHAPTER ~~II~~ V

AIRSPACE ~~ARCHITECTURE~~ ⌦ , INTEROPERABILITY AND TECHNOLOGICAL INNOVATION ⌫

↓ 1070/2009 Art. 3.2

~~*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.~~

↓ 1070/2009 Art. 3.3

⇨ new

Article 32~~3a~~

Electronic aeronautical information

Without prejudice to the publication by Member States of aeronautical information and in a manner consistent with that publication, the Network Manager, in cooperation with ~~Eurocontrol~~ ⇨ the Commission ⇦ , shall establish a Union-wide aeronautical information infrastructure to further the availability of electronic aeronautical information of high quality, presented in an easily accessible way and serving the requirements of all relevant users in terms of data quality and timeliness. ⇨ The aeronautical information thus made available shall only be the information that complies with the essential requirements set out in point 2.1 of Annex VIII of Regulation (EU) 2018/1139. ⇦

~~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.~~

🡻 1070/2009 Art. 3.4

~~*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.~~

🡻 551/2004 (adapted)

~~**CHAPTER III**~~

~~**FLEXIBLE USE OF AIRSPACE IN THE SINGLE EUROPEAN SKY**~~

🡻 551/2004 (adapted)

⇨ new

Article 33~~7~~

Flexible use of airspace

1. Taking into account the organisation of military aspects under their responsibility, Member States shall ensure the ~~uniform~~ application within the single European sky of the concept of the flexible use of airspace as described by ~~the~~ ICAO and as developed by Eurocontrol, in order to facilitate airspace management and air traffic management in the context of the common transport policy ⇨ and in consistency with the European ATM Master Plan ⇦ .

2. Member States shall report annually to the Commission on the application, in the context of the common transport policy, of the concept of the flexible use of airspace in respect of the airspace under their responsibility.

3. Where, in particular following the reports submitted by Member States, it becomes necessary to reinforce and harmonise the application of the concept of the flexible use of airspace within the single European sky, ⌦ the Commission shall adopt measures ⌫ ~~implementing rules~~ within the context of the common transport policy. ⌦ Those implementing acts ⌫ shall be adopted in accordance with the ⌦ examination ⌫ procedure ~~under~~ ⌦ referred to in ⌫ Article ~~8~~ 37(3)~~of the framework Regulation~~.

⇩ new

Article 34

SESAR coordination

The entities in charge of tasks established in Union law in the areas of coordination of the SESAR definition phase, the SESAR development phase and the SESAR deployment phase, as the case may be, shall cooperate to ensure effective coordination between those three phases so as to achieve a seamless and timely transition between them.

All relevant civil and military stakeholders shall be involved to the widest possible extent.

🡻 1070/2009 Art. 2.10

~~*Article 15a*~~

~~**Common projects**~~

~~1. Common projects may assist the successful implementation of the ATM Master Plan. Such projects shall support the objectives of this Regulation to improve the performance of the European aviation system in key areas such as capacity, flight and cost efficiency as well as environmental sustainability, within the overriding safety objectives.~~

~~2. The Commission may, in accordance with the regulatory procedure referred to in Article 5(3) of the framework Regulation, develop guidance material concerning the way in which such projects can support the implementation of the ATM Master Plan. Such guidance material shall not prejudice mechanisms for the deployment of such projects concerning functional airspace blocks as agreed upon by the parties of those blocks.~~

~~3. The Commission may also decide, in accordance with the regulatory procedure referred to in Article 5(3) of the framework Regulation, to set up common projects for network-related functions which are of particular importance for the improvement of the overall performance of air traffic management and air navigation services in Europe. Such common projects may be considered eligible for Community funding within the multiannual financial framework. To this end, and without prejudice to Member States' competence to decide on the use of their financial resources, the Commission shall carry out an independent cost-benefit analysis and appropriate consultations with Member States and with relevant stakeholders in accordance with Article 10 of the framework Regulation, exploring all appropriate means for financing the deployment thereof. The eligible costs of deployment of common projects shall be recovered in accordance with the principles of transparency and non-discrimination.~~

⇩ new

Article 35

Common projects

1. The Commission may set up common projects for implementing the essential operational changes identified in the European ATM Master Plan having a network-wide impact.

2. The Commission may also establish governance mechanisms for common projects and their implementation.

3. Common projects may be eligible for Union funding. To this end, and without prejudice to Member States' competence to decide on the use of their financial resources, the Commission shall carry out an independent cost-benefit analysis and appropriate consultations with Member States and with relevant stakeholders in accordance with Article 10, exploring all appropriate means for financing the implementation thereof.

4. The Commission shall establish the common projects and governance mechanisms referred to in paragraphs 1 and 2 through implementing acts adopted in accordance with the examination procedure referred to in Article 37(3).

🡻 551/2004

~~*Article 8*~~

~~**Temporary suspension**~~

~~1. In cases where the application of Article 7 gives rise to significant operational difficulties, Member States may temporarily suspend such application on condition that they inform without delay the Commission and the other Member States thereof.~~

~~2. Following the introduction of a temporary suspension, adjustments to the rules adopted under Article 7(3) may be worked out for the airspace under the responsibility of the Member State(s) concerned, in accordance with the procedure under Article 8 of the framework Regulation~~

CHAPTER ~~IV~~ VI

FINAL PROVISIONS

🡻 1070/2009 Art. 2.11

~~*Article 17*~~

~~Revision of Annexes~~

~~Measures, designed to amend non-essential elements of the Annexes in order to take into account technical or operational developments, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 5(4) of the framework Regulation.~~

~~On imperative grounds of urgency, the Commission may use the urgency procedure referred to in Article 5(5) of the framework Regulation.~~

⇩ new

Article 36

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The delegation of power referred to in Articles 6 and 26 shall be conferred on the Commission for a period of seven years from [the date of the publication of this Regulation]. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.

3. The delegation of power referred to in Articles 6 and 26 may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

5. A delegated act adopted pursuant to Articles 6 and 26 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of 2 months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by 2 months at the initiative of the European Parliament or the Council.

🡻 549/2004 (adapted)

⇨ new

Article 37 ~~5~~

Committee procedure

1. The Commission shall be assisted by the Single Sky Committee, hereinafter referred to as ‘the Committee’, composed of two representatives of each Member State and chaired by ~~a representative of~~ the Commission. The Committee shall ensure an appropriate consideration

of the interests of all categories of users. ⇨ The Committee shall be a committee within the meaning of Regulation (EU) No 182/2011. ⇦

2. Where reference is made to this paragraph, Articles 3 and 7 ⇨ 4⇦ of Decision 1999/468/EC ⇨ Regulation (EU) No 182/2011 ⇦ shall apply, having regard to the provisions of Article 8 thereof.

3. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC ⇨ Regulation (EU) No 182/2011 ⇦ shall apply, having regard to the provisions of Article 8 thereof.

The period referred to in Article 5(6) of Decision 1999/468/EC shall be set at one month.

↓ 1070/2009 Art. 1.4

4. Where reference is made to this paragraph, Article 5a(1) to (4) and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

5. Where reference is made to this paragraph, Article 5a(1), (2), (4),(6) and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

↓ 1070/2009 Art. 1.5 (adapted)

Article 38~~10~~

⌦ Consultation of stakeholders ⌫

⇩ new

1. Member States, national supervisory authorities, the Agency whether or not it is acting as PRB and the Network Manager shall establish consultation mechanisms for appropriate consultation of stakeholders for the exercise of their tasks in the implementation of this Regulation.

↓ 1070/2009 Art. 1.5 (adapted)

⇨ new

2. The Commission shall establish such a ~~consultation~~ mechanism at ~~Community~~ ⌦ Union ⌫ level ⇨ to consult on matters related to the implementation of this Regulation where appropriate ⇦. The specific Sectoral Dialogue Committee set up under ⌦ Commission ⌫ Decision 98/500/EC shall be involved in the consultation. ~~3. Consultation of stakeholders shall cover, in particular, the development and introduction of new concepts and technologies in the EATMN.~~ ⇨ For the purpose of point (e) of paragraph 3, when consultation relating to military aspects is required, the Commission shall, in addition to Member States, consult the European Defence Agency and other competent military experts designated by the Member States. ⇦

3. The stakeholders may include:

(a) air navigation service providers ⇨ or relevant groups representing them ⇦ ;~~.~~

⇩ new

(b) the Network Manager;

🡻 1070/2009 Art. 1.5 (adapted)

⇨ new

(c) airport operators ⇨ or relevant groups representing them ⇦ ;~~.~~

(d) ~~relevant~~ airspace users or relevant groups representing ⌦ them; ⌫ ~~airspace users,~~

(e) ⌦ the ⌫ military ~~authorities;~~;~~.~~

(f) ⌦ the ⌫ manufacturing industry; ~~and,~~

(g) professional staff representative bodies;

⇩ new

(h) relevant non-governmental organisations.

🡻 1070/2009 Art. 1.5 (adapted)

~~*Article 6*~~

~~Industry consultation body~~

~~Without prejudice to the role of the Committee and of Eurocontrol, the Commission shall establish an 'industry consultation body', to which air navigation service providers, associations of airspace users, airport operators, the manufacturing industry and professional staff representative bodies shall belong. The role of this body shall solely be to advise the Commission on the implementation of the single European sky.~~

Article 39~~7~~

Relations with ~~European~~ third countries

🡻 1070/2009 Art. 1.5 (adapted)

⇨ new

The ~~Community~~ ⌦ Union ⌫ and its Member States shall aim at and support the extension of the ~~s~~Single European ~~s~~Sky to countries which are not members of the European Union. To that end, they shall endeavour, ~~either~~ in the framework of agreements concluded with neighbouring third countries ~~or in the context of~~ ~~agreements on functional airspace blocks~~ , to

extend the ~~application of this Regulation, and of the measures referred to in Article 3,~~ ⌦ Single European Sky ⌫ to those countries. ⇨ In addition, they shall endeavour to cooperate with those countries either in the context of agreements on network functions, or in the framework of the Agreement between the Union and Eurocontrol providing a general framework for enhanced cooperation, reinforcing the 'pan-European dimension' of ATM. ⇦

🡻 1070/2009 Art. 1.5

~~Article 8~~

~~Implementing rules~~

~~1. For the development of implementing rules the Commission may issue mandates to Eurocontrol or, where appropriate, to another body, setting out the tasks to be performed and the timetable for this and taking into account the relevant deadlines laid down in this Regulation. The Commission shall act in accordance with the advisory procedure referred to in Article 5(2).~~

~~2. When the Commission intends to issue a mandate in accordance with paragraph 1 it shall endeavour to make the best use of existing arrangements for the involvement and consultation of all interested parties, where these arrangements correspond to Commission practices on transparency and consultation procedures and do not conflict with its institutional obligations.~~

⇩ new

Article 40

Support by other bodies

The Commission may request support from other bodies for the fulfilment of its tasks under this Regulation.

🡻 1070/2009 Art. 2.1

~~Article 4~~

~~**Safety requirements**~~

~~The Commission shall, in accordance with the regulatory procedure referred to in Article 5(3) of the framework Regulation, adopt implementing rules incorporating the relevant provisions of the Eurocontrol safety regulatory requirements (ESARRs) and subsequent amendments to those requirements falling within the scope of this Regulation, where necessary with appropriate adaptations.~~

↓ 550/2004 (adapted)

~~CHAPTER IV~~

~~FINAL PROVISIONS~~

↓ 1070/2009 Art. 2.11 (adapted)

⇨ new

Article 41~~18~~

Confidentiality

1. Neither the national supervisory authorities, acting in accordance with their national legislation, nor the Commission ⇨ , nor the Agency, whether or not it is acting as PRB, nor the Network Manager ⇦ shall disclose information of a confidential nature, in particular information about air navigation service providers, their business relations or their cost components.

2. Paragraph 1 shall be without prejudice to the right of disclosure by national supervisory authorities ~~or~~, the Commission ⇨ or the Agency acting as PRB ⇦ where this is essential for the fulfilment of their duties, in which case such disclosure shall be proportionate and shall have regard to the legitimate interests of air navigation service providers, airspace users, airports or other relevant stakeholders in the protection of their ~~business secrets~~ ⌦ commercially sensitive information ⌫ .

3. Information and data provided pursuant to the charging scheme ⇨ laid down in Articles 19 to 24, in particular as regards determined costs, actual costs and revenues of designated air traffic service providers ⇦ ~~referred to in Article 14~~ shall be publicly disclosed.

↓ 1070/2009 Art. 1.5 (adapted)

⇨ new

Article 42~~9~~

Penalties

~~The penalties that~~ Member States shall lay down ⌦ rules on penalties applicable to ⌫ ~~for~~ infringements of this Regulation and of the ~~measures referred to in Article 3~~ ⇨ delegated and implementing acts adopted on the basis thereof ⇦ in particular by airspace users ⇨ , airport operators ⇦ and ⌦ air navigation ⌫ service providers ⇨ , and shall take all measures necessary to ensure that they are implemented. The penalties provided for ⇦ shall be effective, proportionate and dissuasive.

↓ 549/2004

~~Article 12~~

~~**Supervision, monitoring and methods of impact assessment**~~

~~1. The supervision, monitoring and methods of impact assessment shall be based on the submission of annual reports by the Member States on implementation of the actions taken pursuant to this Regulation and to the measures referred to in Article 3.~~

↓ 1070/2009 Art. 1.6(a)

~~2. The Commission shall periodically review the application of this Regulation and of the measures referred to in Article 3, and shall firstly report to the European Parliament and to the Council by 4 June 2011, and at the end of each reference period referred to in Article 11(3)(d) thereafter. When justified for this purpose, the Commission may request from the Member States information additional to the information contained in the reports submitted by them in accordance with paragraph 1 of this Article.~~

↓ 549/2004

~~3. For the purposes of drafting the reports referred to in paragraph 2, the Commission shall request the opinion of the Committee.~~

↓ 1070/2009 Art. 1.6(b)

~~4. The reports shall contain an evaluation of the results achieved by the actions taken pursuant to this Regulation including appropriate information about developments in the sector, in particular concerning economic, social, environmental, employment and technological aspects, as well as about quality of service, in the light of the original objectives and with a view to future needs.~~

⇩ new

Article 43

Evaluation

1. The Commission shall conduct an evaluation to assess the application of this Regulation by 2030. When justified for this purpose, the Commission may request from the Member States information relevant to the application of this Regulation.

2. The Commission shall forward its findings to the European Parliament and to the Council. The findings of the evaluation shall be made public.

↓ 1070/2009 Art. 2.12 (adapted)

~~*Article 18a*~~

~~**Review**~~

~~The Commission shall submit a study to the European Parliament and to the Council no later than 4 December 2012 evaluating the legal, safety, industrial, economic and social impacts of the application of market principles to the provision of communication, navigation, surveillance and aeronautical information services, compared to existing or alternative organisational principles and taking into account developments in the functional airspace blocks and in available technology.~~

↓ 551/2004 (adapted)

~~CHAPTER IV~~

~~FINAL PROVISIONS~~

~~*Article 10*~~

~~**Review**~~

~~In the context of the periodical review referred to in Article 12(2) of the framework Regulation, the Commission shall finalise a prospective study on the conditions for future application of the concepts referred to in Articles 3, 5 and 6 to lower airspace.~~

~~On the basis of the study's conclusions and in the light of the progress achieved, the Commission shall submit at the latest by 31 December 2006 a report to the European Parliament and to the Council accompanied, if appropriate, by a proposal to extend the application of these concepts to lower airspace, or to determine any other steps. In the event of such an extension being envisaged, the relevant decisions should preferably be taken before 31 December 2009.~~

↓ 549/2004 (adapted)

Article 44~~*13*~~

Safeguards

This Regulation shall not prevent the application of measures by a Member State to the extent ~~to which~~ ⌦ that ⌫ these are needed to safeguard essential security or defence policy interests. Such measures are in particular those which are imperative:

(e) for the surveillance of airspace that is under its responsibility in accordance with ICAO Regional Air Navigation agreements, including the capability to detect, identify and evaluate all aircraft using such airspace, with a view to

seeking to safeguard safety of flights and to take action to ensure security and defence needs;

(f) in the event of serious internal disturbances affecting the maintenance of law and order;

(g) in the event of war or serious international tension constituting a threat of war;

(h) for the fulfilment of a Member State's international obligations in relation to the maintenance of peace and international security;

(i) in order to conduct military operations and training, including the necessary possibilities for exercises.

↓ 1070/2009 Art. 1.7

~~*Article 13a*~~

~~European Aviation **Safety Agency**~~

~~When implementing this Regulation and Regulations (EC) No 550/2004, (EC) No 551/2004, (EC) No 552/2004 and Regulation (EC) No 216/2008 of the European Parliament and of the Council of 20 February 2008 on common rules in the field of civil aviation and establishing a European Aviation Safety Agency[53], Member States and the Commission, in accordance with their respective roles as provided for by this Regulation, shall coordinate as appropriate with the European Aviation Safety Agency to ensure that all safety aspects are properly addressed.~~

↓

Article 45

Repeal

Regulations (EC) Nos 549/2004, 550/2004 and 551/2004 are repealed.

References to the repealed Regulations shall be construed as references to this Regulation and shall be read in accordance with the correlation table in Annex III.

↓ 550/2004 (adapted)

Article *46~~19~~*

Entry into force ⌦ and application ⌫

1. This Regulation shall enter into force on the ~~20th~~ ⌦ twentieth ⌫ day following that of its publication in the *Official Journal of the European Union*.

---

[53] ~~OJ L 79, 19.3.2008, p. 1.~~

~~2. However, Articles 7 and 8 shall enter into force one year after publication of the common requirements, as referred to in Article 6, in the Official Journal of the European Union.~~

⇩ new

2. Article 3(3) shall apply from *[OP please insert the date - 48 months after the entry into force of this Regulation]*.

Articles 10 to 24 shall apply as from 1 July 2023. However, Article 11 of Regulation (EC) No 549/2004 and Article 15 of Regulation (EC) No 550/2004, and the implementing acts adopted on the basis thereof, shall continue to apply for the purposes of the implementation of the performance and charging schemes pertaining to the third reference period.

Article 26(3) and Article 32 shall apply to the Network Manager from the day on which an appointment decision, adopted in accordance with Article 27(2) after the entry into force of this Regulation and encompassing those provisions, becomes applicable.

🡻 550/2004

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

Done at Brussels,

For the European Parliament	*For the Council*
The President	*The President*