

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)****(Text with EEA relevance)**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

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

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

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

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

Whereas:

- (1) 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 satisfied under this new environment.
- (2) 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.

- (3) Regulation (EC) No 549/2004 of the European Parliament and of the Council of 10 March 2004 (the framework Regulation) ⁽⁵⁾ lays down the framework for the creation of the single European sky.
- (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) ⁽⁶⁾. 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.
- (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.
- (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.
- (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.

⁽¹⁾ OJ C 103 E, 30.4.2002, p. 26.

⁽²⁾ OJ C 241, 7.10.2002, p. 24.

⁽³⁾ OJ C 278, 14.11.2002, p. 13.

⁽⁴⁾ Opinion of the European Parliament of 3 September 2002 (OJ C 272 E, 13.11.2003, p. 303), Council common position of 18 March 2003 (OJ C 129 E, 3.6.2003, p. 16) and position of the European Parliament of 3 July 2003 (not yet published in the Official Journal). Legislative resolution of the European Parliament of 29 January 2004 and Decision of the Council of 2 February 2004.

⁽⁵⁾ See page 1 of this Official Journal.

⁽⁶⁾ See page 20 of this Official Journal.

- (8) Smooth operation of the air transport system also requires uniform and high safety standards for air navigation service providers.
- (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.
- (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.
- (11) Conditions attached to certificates should be objectively justified and should be non-discriminatory, proportionate and transparent, and compatible with relevant international standards.
- (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.
- (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.
- (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.
- (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.
- (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.
- (17) The accounts of all air navigation service providers should provide for maximum transparency.
- (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.
- (19) Charging conditions applying to airspace users should be fair and transparent.
- (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.
- (21) There should be no discrimination between airspace users as to the provision of equivalent air navigation services.
- (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.
- (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.
- (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.

- (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.
- (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.
- (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.
- (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,

HAVE ADOPTED THIS REGULATION:

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.

Article 2

Tasks of national supervisory authorities

1. The national supervisory authorities referred to in Article 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.

2. To this end, each national supervisory authority shall organise proper inspections and surveys to verify compliance with the requirements of this Regulation. The air navigation service provider concerned shall facilitate such work.

3. In respect of functional airspace blocks that extend across the airspace falling under the responsibility of more than one Member State, the Member States concerned shall conclude an agreement on the supervision provided for in this Article with regard to the air navigation service providers providing services relating to those blocks. Member States may conclude an agreement on the supervision provided for in this Article with regard to the air navigation service provider providing services in a Member State other than that in which the provider has its principal place of operation.

4. National supervisory authorities shall make appropriate arrangements for close cooperation with each other 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 6 or conditions set out in Annex II.

Article 3

Recognised organisations

1. National supervisory authorities may decide to delegate in full or in part the inspections and surveys referred to in Article 2(2) to recognised organisations that fulfil the requirements set out in Annex I.

2. A recognition 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 recognised organisations located in the Community to undertake these inspections and surveys.

Article 4

Safety requirements

The Commission shall, in accordance with the procedure referred to in Article 5(3) of the framework Regulation, identify and adopt the Eurocontrol safety regulatory requirements (ESARRs) and subsequent amendments to those requirements within the scope of this Regulation that shall be made mandatory under Community law. Publication shall take the form of references to such ESARRs in the *Official Journal of the European Union*.

Article 5

Licensing of controllers

As soon as possible after the entry into force of this Regulation, the Commission shall present, if appropriate, a proposal to the European Parliament and to the Council on the licensing of controllers.

CHAPTER II

RULES FOR THE PROVISION OF SERVICES

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 7

Certification of air navigation service providers

1. The provision of all air navigation services within the Community shall be subject to certification by Member States.

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.

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.

6. Without prejudice to Article 8 and subject to Article 9, the issue of certificates shall confer on air navigation service providers the possibility of offering their services to other air navigation service providers, airspace users and airports within the Community.

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. Such measures may include the revocation of the certificate.

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.

Article 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.

2. Member States shall define the rights and obligations to be met by the designated service providers. The obligations may include conditions for the timely supply of relevant information enabling all aircraft movements in the airspace under their responsibility to be identified.

3. Member States have discretionary powers in choosing a service provider, on condition that the latter fulfils the requirements and conditions referred to in Articles 6 and 7.

4. In respect of functional airspace blocks established in accordance with Article 5 of the airspace Regulation that extend across the airspace under the responsibility of more than one Member State, the Member States concerned shall jointly designate one or more air traffic service providers, at least one month before implementation of the airspace block.

5. Member States shall inform the Commission and other Member States immediately of any decisions 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.

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.

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).

Article 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 in respect of the management of specific airspace blocks.

*Article 12***Transparency of accounts**

1. Air navigation service providers, whatever their system of ownership or legal form, shall draw up, submit to audit and publish their financial accounts. These accounts shall comply with the international accounting standards adopted by the Community. Where, owing to the legal status of the 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, air navigation service providers shall publish an annual report and regularly undergo an independent audit.

3. When providing a bundle of services, air navigation service providers shall, in their internal accounting, identify the relevant costs and income for air navigation services, broken down in accordance with Eurocontrol's principles for establishing the cost-base for route facility charges and the calculation of unit rates and, where appropriate, shall keep consolidated accounts for other, non-air-navigation services, as they would be required to do if the services in question were provided by separate undertakings.

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⁽¹⁾ to air navigation service providers that fall within the scope of that regulation.

*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.

CHAPTER III

CHARGING SCHEMES*Article 14***General**

In accordance with the requirements of Articles 15 and 16, a charging scheme for air navigation services shall be developed that contributes to the achievement of greater transparency with respect to the determination, imposition and enforcement of charges to airspace users. 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.

*Article 15***Principles**

1. The charging scheme shall be based on the account of costs for air navigation services incurred by service providers for the benefit of airspace users. The scheme shall allocate these costs among categories of users.

2. The following principles shall be applied when establishing the cost-base for charges:

- (a) the cost to be shared among airspace users shall be the full 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;
- (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 recognised organisations, as well as other costs

⁽¹⁾ OJ L 243, 11.9.2002, p. 1.

- incurred by the relevant Member State and service provider in relation to the provision of air navigation services;
- (c) the cost of different air navigation services shall be identified separately, as provided for in Article 12(3);
- (d) cross-subsidy between different air navigation services shall be allowed only when justified for objective reasons, and subject to clear identification;
- (e) 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. Without prejudice to Eurocontrol's charging system for en route charges, 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) air navigation services may produce sufficient revenues to exceed all direct and indirect operating costs and to provide for a reasonable return on assets to contribute towards necessary capital improvements;
- (d) 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;
- (e) charges shall encourage the safe, efficient and effective provision of air navigation services with a view to a high level of safety and to cost efficiency and shall stimulate integrated service provision. To that effect, such charges may be used to provide:
- mechanisms, including incentives consisting of financial advantages and disadvantages, to encourage air navigation service providers and/or airspace users to support improvements in air traffic flow management such as increased capacity and reduction of delays, while maintaining an optimum safety level. The decision as to whether to apply such mechanisms remains the sole responsibility of each Member State,
 - revenues to benefit projects designed to assist specific categories of airspace users and/or air navigation service providers in order to improve collective air navigation infrastructures, the provision of air navigation services and the use of airspace.
4. The implementing rules in the fields covered by paragraphs 1, 2 and 3 shall be established in accordance with the procedure referred to in Article 8 of the framework Regulation.

Article 16

Review of charges

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 the Member States. The Commission shall endeavour to establish the necessary mechanisms for making use of Eurocontrol expertise.
2. At the request of one or more Member States which consider that the abovementioned principles and rules have not been properly applied, or on its own initiative, the Commission shall carry out an investigation on any allegation of non-compliance or non-application of the principles and/or rules concerned. 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 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 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.

CHAPTER IV

FINAL PROVISIONS

Article 17

Adjustment to technical progress

1. In order to make adaptations to technical developments, adjustments may be made to the Annexes in accordance with the procedure referred to in Article 5(3) of the framework Regulation.

2. The Commission shall publish implementing rules adopted on the basis of this Regulation in the *Official Journal of the European Union*.

Article 18

Confidentiality

1. Neither the national supervisory authorities, acting in accordance with their national legislation, nor the Commission 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 where it is essential for the purposes of fulfilling their duties, in which case such disclosure shall be proportionate and shall have regard to the legitimate interests of air navigation service providers in the protection of their business secrets.

3. Moreover, paragraph 1 shall not preclude disclosure of information, other than information of a confidential nature, on the conditions and performance of service provision.

Article 19

Entry into force

1. This Regulation shall enter into force on the 20th day following that of its publication in the *Official Journal of the European Union*.

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*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Strasbourg, 10 March 2004.

For the European Parliament

The President

P. COX

For the Council

The President

D. ROCHE

ANNEX I

REQUIREMENTS FOR RECOGNISED ORGANISATIONS

The recognised organisation must:

- be able to document extensive experience in assessing public and private entities in the air transport sectors, in particular air navigation service providers, and in other similar sectors in one or more of the fields covered by this Regulation,
 - have comprehensive rules and regulations for the periodic survey of the abovementioned entities, published and continually upgraded and improved through research and development programmes,
 - not be controlled by air navigation service providers, by airport management authorities or by others engaged commercially in the provision of air navigation services or in air transport services,
 - be established with significant technical, managerial, support and research staff commensurate with the tasks to be carried out,
 - be managed and administered in such a way as to ensure the confidentiality of information required by the administration,
 - be prepared to provide relevant information to the national supervisory authority concerned,
 - have defined and documented its policy and objectives for and commitment to quality and have ensured that this policy is understood, implemented and maintained at all levels in the organisation,
 - have developed, implemented and maintained an effective internal quality system based on appropriate parts of internationally recognised quality standards and in compliance with EN 45004 (inspection bodies) and with EN 29001, as interpreted by the IACS Quality System Certification Scheme Requirements,
 - be subject to certification of its quality system by an independent body of auditors recognised by the authorities of the Member State in which it is located.
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ANNEX II

CONDITIONS TO BE ATTACHED TO CERTIFICATES

1. Certificates shall specify:
 - (a) the national supervisory authority issuing the certificate;
 - (b) the applicant (name and address);
 - (c) the services which are certified;
 - (d) a statement of the applicant's conformity with the common requirements, as defined in Article 6 of this Regulation;
 - (e) the date of issue and the period of validity of the certificate.

 2. Additional conditions attached to certificates may, as appropriate, be related to:
 - (a) non-discriminatory access to services for airspace users and the required level of performance of such services, including safety and interoperability levels;
 - (b) the operational specifications for the particular services;
 - (c) the time by which the services should be provided;
 - (d) the various operating equipment to be used within the particular services;
 - (e) ring-fencing or restriction of operations of services other than those related to the provision of air navigation services;
 - (f) contracts, agreements or other arrangements between the service provider and a third party and which concern the service(s);
 - (g) provision of information reasonably required for the verification of compliance of the services with the common requirements, including plans, financial and operational data, and major changes in the type and/or scope of air navigation services provided;
 - (h) any other legal conditions which are not specific to air navigation services, such as conditions relating to the suspension or revocation of the certificate.
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