Regulation (EC) No 549/2004 of the European Parliament and of the Council

of 10 March 2004

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

(the framework Regulation)

(Text with EEA relevance)

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THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission,

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

Having regard to the opinion of the Committee of the Regions,

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

Whereas:

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

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

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

(4) The single European sky initiative should be developed in line with the obligations stemming from the membership of the Community and its Member States of Eurocontrol, and in line with the principles laid down by the 1944 Chicago Convention on International Civil Aviation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

HAVE ADOPTED THIS REGULATION:

Article 1

Scope

1. *Omitted*

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

3. The application of this Regulation and of the measures referred to in Article 3 shall be without prejudice to the rights and duties of Gibraltar under the 1944 Chicago Convention on International Civil Aviation (the Chicago Convention).

Article 2

Definitions

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

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

(a) preventing collisions:

- between aircraft, and
- in the manoeuvring area between aircraft and obstructions; and

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

2.'aerodrome control service' means an ATC service for aerodrome traffic;

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

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

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

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

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

8.' airspace users ' means operators of aircraft operated as general air traffic;

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

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

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

12.‘area control service’ means an ATC service for controlled flights in a block of airspace;

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

13a.‘ATM Master Plan’ means the plan endorsed by Council Decision 2009/320/EC , 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);

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

15.‘ certificate ’ means a document issued by the national supervisory authority which confirms that an air navigation service provider meets the requirements for providing a specific service;

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;

16a.‘the Director’ means the Director of Civil Aviation, as defined in the Civil Aviation Act 2009;

17.‘European air traffic management network’ (EATMN) means the collection of relevant systems enabling air navigation services in the Community to be provided, including the interfaces at boundaries with third countries;

For these purposes relevant systems are:

(a) systems and procedures for airspace management;

(b) systems and procedures for air traffic flow management;

(c) systems and procedures for air traffic services, in particular flight data processing systems, surveillance data processing systems and human-machine interface systems;

(d) communications systems and procedures for ground-to-ground, air-to-ground and air-to-air communications;

(e) navigation systems and procedures;

(f) surveillance systems and procedures;

(g) systems and procedures for aeronautical information services; and

(h) systems and procedures for the use of meteorological information;

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

19.‘constituents’ means tangible objects such as hardware and intangible objects such as software upon which the interoperability of the Gibraltar ATMS with the EATMN depends;

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

21.. . . . .

22.‘ flexible use of airspace ’ means an airspace management concept 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;

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

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;

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;

24.‘flight level’ means a surface of constant atmospheric pressure which is related to the specific pressure datum of 1 013,2 hectopascals and is separated from other such surfaces by specific pressure intervals;

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;

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 movements are carried out in conformity with the procedures of the ICAO;

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

27a.‘Gibraltar air traffic management system’ or ‘Gibraltar ATMS’ means the collection of relevant systems enabling air navigation services in Gibraltar to be provided, including the interfaces at boundaries with other countries and territories. For these purposes relevant systems are:

(a) and procedures for airspace management;

(b) systems and procedures for air traffic flow management;

(c) systems and procedures for air traffic services, in particular flight data processing systems, surveillance data processing systems and human-machine interface systems;

(d) communications systems and procedures for ground-to-ground, air-to-ground and air-to-air communications;

(e) navigation systems and procedures;

(f) surveillance systems and procedures;

(g) systems and procedures for aeronautical information services; and

(h) systems and procedures for the use of meteorological information;

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

29.‘meteorological services’ means those facilities and services that provide aircraft with meteorological forecasts, briefs and observations as well as any other meteorological information and data provided by States for aeronautical use;

30.‘navigation services’ means those facilities and services that provide aircraft with positioning and timing information;

31.‘operational data’ means information concerning all phases of flight that are required to take operational decisions 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 Gibraltar ATMS and in relation to the EATMN;

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

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 Gibraltar ATMS in relation to the EATMN in such a manner that from the user's perspective the Gibraltar ATMS functions as if it and the EATMN were a single entity;

37.. . . . .

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

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;

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

41.‘ cross-border services ’ means any situation where air navigation services are provided in Gibraltar by a service provider certified in a Member State.

Article 3

Fields for action

1.This Regulation establishes a harmonised regulatory framework 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);

(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); 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);

and with the implementing rules adopted before exit day by the Commission on the basis of this Regulation and the Regulations referred to above as well as with the regulations made on or after exit day by the Minister with responsibility for Civil Aviation under any of the Regulations referred to in this Article.

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

Article 4

National supervisory authority

1. The Minister with responsibility for Civil Aviation shall either nominate or establish a body or bodies as the national supervisory authority in order to assume the tasks assigned to such authority under this Regulation and under the measures referred to in Article 3.

2. The national supervisory authority 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 authority and such providers.

3. The national supervisory authority shall exercise their powers under this Regulation and under the measures referred to in Article 3 impartially, independently and transparently.

4. The national supervisory authority shall ensure that it has the necessary resources and capabilities to carry out the tasks assigned to it under this Regulation and under the measures referred to in Article 3 in an efficient and timely manner.

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 paragraphs 2, 3 and 4.

Articles 5 to 11

Omitted

Article 12

Review

1. *Omitted*

2. The Minister with responsibility for Civil Aviation shall periodically review the application of this Regulation and of the measures referred to in Article 3.

3. *Omitted*

4. The review must include an evaluation of the results achieved by the actions taken pursuant to this Regulation and to the measures referred to in Article 3 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 and with a view to future needs.

Article 13

Safeguards

This Regulation and the measures referred to in Article 3 shall not prevent the application of measures to the extent to which 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 the responsibility of Gibraltar 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 Gibraltar'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.

Article 13a

Omitted

Article 14

Omitted