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)

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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) 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) 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). 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.

(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 which form part of the Gibraltar ATMS. The objective of this Regulation is to establish common requirements for the safe and efficient provision of air navigation services in the airspace under the responsibility of Gibraltar.

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 the national supervisory authority

1. The national supervisory authority 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 Gibraltar.

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

Article 3

Qualified entities

1. The national supervisory authority 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 the national supervisory authority shall be valid for a renewable period of three years.

Article 4

Omitted

Article 5

Licensing of controllers

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CHAPTER II

RULES FOR THE PROVISION OF SERVICES

Article 6

Common requirements

1. The Minister with responsibility for Civil Aviation may by regulations prescribe common requirements for the provision of air navigation services in the airspace under the responsibility of Gibraltar. 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.

2. Regulations under paragraph 1–

(a) may make different provision for different purposes;

(b) may make transitional, transitory or saving provision;

(c) may make consequential, incidental or supplementary provision.

Article 7

Certification of air navigation service providers

1.The provision of all air navigation services in the airspace under the responsibility of Gibraltar shall be subject to certification by the national supervisory authority.

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.The national supervisory authority 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.

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, the national supervisory authority may allow the provision of air navigation services in all or part of the airspace under the responsibility of Gibraltar without certification in cases where the provider of such services offers them primarily to aircraft movements other than general air traffic.

6. *Omitted*

7. The national supervisory authority shall monitor compliance with the common requirements and with the conditions attached to the certificates. If the 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.

8. Any certificate issued before exit day in a Member State in accordance with Article 7 of Regulation (EC) No 550/2004 which continues to be in force or effective on or after exit day by virtue of Part 3 of Schedule 4 to the European Union (Withdrawal) Act 2019 is:

(a) to continue to be in force or effective on and after exit day for the remainder of its validity period up to a maximum of 2 years (subject to any earlier suspension or cancellation by the national supervisory authority); and

(b) for the purposes of this Regulation and the other measures referred to in Article 3 of the framework Regulation, to be treated as if it was issued by the national supervisory authority in accordance with this Article.

Article 8

Designation of air traffic service providers

1. The national supervisory authority shall ensure the provision of air traffic services on an exclusive basis within specific airspace blocks in respect of the airspace under the responsibility of Gibraltar. For this purpose, the national supervisory authority shall designate an air traffic service provider holding a valid certificate issued in accordance with Article 7.

2. *Omitted*

3. The national supervisory authority shall define the rights and obligations to be met by the designated air traffic service providers. The obligations may include conditions for the timely supply of relevant information enabling all aircraft movements in the airspace under the responsibility of Gibraltar to be identified.

4. The national supervisory authority 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.

Article 9

Designation of providers of meteorological services

1.The national supervisory authoritys 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 the responsibility of Gibraltar, taking into account safety considerations.

2.*Omitted*

Articles 9a & 9b

Omitted

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 accordance with Article 7.

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.

3.In cases involving the provision of air traffic services, the approval of the the national supervisory authority concerned shall be required. In cases involving the provision of meteorological services, the approval of the t he national supervisory authority concerned shall be required if it has designated a provider on an exclusive basis in accordance with Article 9(1).

Article 11

Omitted

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 international accounting standards within the meaning 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 (see Article 2 of that Regulation). 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 identify and disclose the costs and income deriving from air navigation services 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.The national supervisory authority shall have a right of access to the accounts of service providers that provide services within the airspace under the responsibility of Gibraltar.

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. The national supervisory authority shall approve such standard conditions.

CHAPTER III

CHARGING SCHEMES

Articles 14 & 15

Omitted

Article 15a

Common projects

1. The Minister with responsibility for Civil Aviation may by regulations make provision imposing on any person a requirement derived from a common project within the meaning of Article 15a of 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, as that Regulation has effect in EU law as amended from time to time.

2. Regulations under paragraph 1–

(a) may make different provision for different purposes;
(b) may make transitional, transitory or saving provision;
(c) may make consequential, incidental or supplementary provision.

Article 16

Omitted

CHAPTER IV

FINAL PROVISIONS

Article 17

Revision of Annexes

1. The Minister with responsibility for Civil Aviation may by regulations amend Annex 1 or 2.

2. Regulations under paragraph 1 –

(a) may make different provision for different purposes;
(b) may make transitional, transitory or saving provision;
(c) may make consequential, incidental or supplementary provision.

Article 18

Confidentiality

1. Neither the national supervisory authority, nor the Minister with responsibility for Civil Aviation 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 the national supervisory authority or the Minister with responsibility for Civil Aviation 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.

Article 18a

Omitted

Article 19

Omitted

ANNEX I

REQUIREMENTS FOR QUALIFIED ENTITIES

The qualified entities 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,
- 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.

ANNEX II

CONDITIONS TO BE ATTACHED TO CERTIFICATES

1.Certificates shall specify:

(a) *Omitted*

(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.