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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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(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,

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 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 the 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, including human resources requirements for the provision of air navigation services. 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.

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 6 or with the conditions set out in Annex II.

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.

6. If permitted by national law and with a view to regional cooperation, national supervisory authorities may also conclude agreements regarding the division of responsibilities regarding supervisory tasks.

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.

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.

Article 5

Licensing of controllers

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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 Articles 8 and 9, the issue of certificates shall confer on air navigation service providers the possibility of offering their services to Member States, 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 on condition that safety is not compromised. 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. For the provision of cross-border services, Member States shall ensure that compliance with this Article and Article 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:

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

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

(c) use only facilities in that Member State.

3. Member States 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 their responsibility to be identified.

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 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.

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.

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 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 a reduced environmental impact. 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

(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 3, 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 4 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. The Commission shall, by 4 December 2011 and in accordance with the 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.

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 or renewed 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 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 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 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, 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.

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 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.

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.

Article 16

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 the Member 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.

CHAPTER IV

FINAL PROVISIONS

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.

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 or the Commission 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.

3. Information and data provided pursuant to the charging scheme referred to in Article 14 shall be publicly disclosed.

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.

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.

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 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.

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.