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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)

(Text with EEA relevance)

Introductory Text

CHAPTER I - GENERAL

Article 1 Objective and scope

CHAPTER II - AIRSPACE ARCHITECTURE

Article 2 Division level
Article 3 *Omitted*
Article 3a Electronic aeronautical information
Article 4 Rules of the air and airspace classification
Article 5 Reconfiguration of the upper airspace
Article 6 Network management and design

CHAPTER III - FLEXIBLE USE OF AIRSPACE IN THE SINGLE EUROPEAN SKY

Article 7 Flexible use of airspace
Article 8 Disapplication of Article 7
Article 9 Air traffic flow management

CHAPTER IV - FINAL PROVISIONS

Article 10 *Omitted*
Article 11 *Omitted*

COMMISSION STATEMENT

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)

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

(2) In the report of the High Level Group on the single European sky in November 2000 it is considered that airspace should be designed, regulated and strategically managed on a European basis.

(3) The Communication of the Commission on the creation of the single European sky of 30 November 2001 calls for structural reform to permit the creation of the single European sky by way of a progressively more integrated management of airspace and the development of new concepts and procedures of air traffic management.

(4) 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.

(5) In Article 1 of the 1944 Chicago Convention on Civil Aviation, the Contracting States recognise that ‘every State has complete and exclusive sovereignty over the airspace above its territory’. It is within the framework of such sovereignty that the Member States of the Community, subject to applicable international conventions, exercise the powers of a public authority when controlling air traffic.

(6) Airspace is a common resource for all categories of users that needs to be used flexibly by all of them, ensuring fairness and transparency whilst taking into account security and defence needs of Member States and their commitments within international organisations.

(7) Efficient airspace management is fundamental to increasing the capacity of the air traffic services system, to providing the optimum response to various user requirements and to achieving the most flexible use of airspace.

(8) The activities of Eurocontrol confirm that the route network and airspace structure cannot realistically be developed in isolation, as each individual Member State is an integral element of the European air traffic management network (EATMN), both inside and outside the Community.

(9) A progressively more integrated operating airspace should be established for en-route general air traffic in the upper airspace; the interface between upper and lower airspace should be identified accordingly.

(10) A European upper flight information region (EUIR) encompassing the upper airspace under the responsibility of the Member States within the scope of this Regulation should facilitate common planning and aeronautical information publication in order to overcome regional bottlenecks.

(11) Airspace users face disparate conditions of access to, and freedom of movement within, the Community airspace. This is due to the lack of harmonisation in the classification of airspace.

(12) The reconfiguration of airspace should be based on operational requirements regardless of existing boundaries. Common general principles for creating uniform functional airspace blocks should be developed in consultation with and on the basis of technical advice from Eurocontrol.

(13) It is essential to achieve a common, harmonised airspace structure in terms of routes and sectors, to base the present and future organisation of airspace on common principles, and to design and manage airspace in accordance with harmonised rules.

(14) The concept of the flexible use of airspace should be applied effectively; it is necessary to optimise the use of sectors of airspace, especially during peak periods for general air traffic and in high-traffic airspace, by cooperation between Member States in respect of the use of such sectors for military operations and training. To that end, it is necessary to allocate the appropriate resources for an effective implementation of the concept of the flexible use of airspace, taking into account both civil and military requirements.

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

(16) Differences in the organisation of civil-military cooperation in the Community restrict uniform and timely airspace management and the implementation of changes. The success of the single European sky is dependent upon effective cooperation between civil and military authorities, without prejudice to the prerogatives and responsibilities of the Member States in the field of defence.

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

(18) Adequate measures should be introduced to improve the effectiveness of air traffic flow management in order to assist existing operational units, including the Eurocontrol Central Flow Management Unit, to ensure efficient flight operations.

(19) It is desirable to reflect upon the extension of upper airspace concepts to the lower airspace, in accordance with a timetable and appropriate studies,

HAVE ADOPTED THIS REGULATION:

CHAPTER I

GENERAL

Article 1

Objective and scope

1.Within the scope of the framework Regulation, this Regulation concerns the organisation and the use of airspace under the responsibility of Gibraltar. The objective of this Regulation is to support establish common procedures for design, planning and management ensuring the efficient and safe performance of air traffic management.

2.The use of airspace shall support the operation of the air navigation services as a coherent and consistent whole in accordance with Regulation (EC) No 550/2004 of the European Parliament and of the Council of 10 March 2004 on the provision of air navigation services in the single European sky (the service provision Regulation).

3.Without prejudice to Article 10, this Regulation shall apply to the airspace within the ICAO EUR region where Gibraltar is responsible for the provision of air traffic services in accordance with the service provision Regulation.

CHAPTER II

Article 2

Division level

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Article 3

Omitted

Article 3a

Electronic aeronautical information

1. The national supervisory authority, working in consultation with Eurocontrol, shall ensure the availability of electronic aeronautical information of high quality, presented in a harmonised way and serving the requirements of all relevant users in terms of data quality and timeliness.

2. For the purpose of paragraph 1, the national supervisory authority shall:

(a) contribute to the development of an aeronautical information infrastructure in the form of an electronic integrated briefing portal with unrestricted access to interested stakeholders. That infrastructure shall integrate access to and provision of required data elements such as, but not limited to aeronautical information, air traffic services reporting office (ARO) information, meteorological information and flow management information;

(b) support the modernisation and harmonisation of the provision of aeronautical information in its broadest sense in consultation with Eurocontrol and the ICAO.

Article 4

Rules of the air and airspace classification

1. The Minister with responsibility for Civil Aviation may by regulations make provision to:

(a) adopt appropriate provisions on rules of the air based upon ICAO standards and recommended practices;

(b) harmonise the application of the ICAO airspace classification, with appropriate adaptation.

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 5

Reconfiguration of the upper airspace

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Article 6

Network management and design

1. The Minister with responsibility for Civil Aviation may by regulations make provision imposing requirements on any person in connection with the exercise by any person of the air traffic management (ATM) network functions.

2. The air traffic management (ATM) network functions are–

(a) the functions described in Article 6(2) of Regulation (EC) No 551/2004, as that regulation has effect in EU law as amended from time to time;

(b) additional functions added to that list in accordance with Article 6(3) of that Regulation as it has effect in EU law as amended from time to time; and

(c) functions under implementing rules adopted under Article 6(4) of that Regulation as it has, and as those rules have, effect in EU law as amended from time to time.

3. *Omitted*

4. Omitted

5. Omitted

6. The Minister with responsibility for Civil Aviation shall entrust Eurocontrol or another impartial and competent body with the performance of air traffic flow management, subject to appropriate oversight arrangements.

7. The Minister with responsibility for Civil Aviation may by regulations made by statutory instrument make provision about air traffic flow management, including the necessary oversight arrangements, with a view to optimising available capacity in the use of airspace and enhancing air traffic flow management processes. Regulations under this paragraph shall be based on transparency and efficiency, ensuring that capacity is provided in a flexible and timely manner, consistent with the recommendations of the ICAO Regional Air Navigation Plan, European Region.

8. Regulations under paragraph 7 shall support operational decisions by air navigation service providers, airport operators and airspace users and shall cover the following areas:

(a) flight planning;

(b) use of available airspace capacity during all phases of flight, including slot assignment; and

(c) use of routings by general air traffic, including:

- (c) the creation of a single publication for route and traffic orientation,
- options for diversion of general air traffic from congested areas, and

- priority rules regarding access to airspace for general air traffic, particularly during periods of congestion and crisis.

9. When developing and adopting regulations under paragraph 7 the Minister with responsibility for Civil Aviation shall, as appropriate and without prejudice to safety, take into account consistency between flight plans and airport slots and the necessary coordination with adjacent regions.

10. Regulations under paragraph 1 or 7–

(a) may make different provision for different purposes;

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

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

CHAPTER III

FLEXIBLE USE OF AIRSPACE IN THE SINGLE EUROPEAN SKY

Article 7

Flexible use of airspace

1.The persons mentioned in paragraph 1A shall ensure the uniform application within the Gibraltar ATMS of the concept of the flexible use of airspace as described by the ICAO and as developed by Eurocontrol, in order to facilitate airspace management and air traffic management.

1A. Those persons are:

(a) any air navigation service provider;

(b) the national supervisory authority; and

(c) the Minister with responsibility for Civil Aviation.

2.The national supervisory authority shall report annually to the Minister with responsibility for Civil Aviation on the application, of the concept of the flexible use of airspace in respect of the airspace under the responsibility of Gibraltar.

3. The Minister with responsibility for Civil Aviation may by regulations make provision about the flexible use of airspace.

4. When making regulations under paragraph 3 the Minister with responsibility for Civil Aviation must have regard to the reports mentioned in paragraph 2.

5. Regulations under paragraph 3–

(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 8

Disapplication of Article 7

Article 7(1) does not apply if and to the extent that it gives rise to significant operational difficulties.

Article 9

Air traffic flow management

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CHAPTER IV

FINAL PROVISIONS

Article 10

Omitted

Article 11

Omitted

COMMISSION STATEMENT

On the basis of a report on experience in implementing Article 5, the Commission will, if necessary, make proposals for amendment of the procedure provided for in Article 5(6) within a period of five years.