

**REGULATION (EC) No 1070/2009 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 21 October 2009**

**amending Regulations (EC) No 549/2004, (EC) No 550/2004, (EC) No 551/2004 and (EC) No 552/2004
in order to improve the performance and sustainability of the European aviation system**

(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 ⁽¹⁾,

Having regard to the opinion of the Committee of the Regions ⁽²⁾,

Acting in accordance with the procedure laid down in Article 251 of the Treaty ⁽³⁾,

Whereas:

- (1) Implementation of the common transport policy requires an efficient air transport system allowing the safe, regular and sustainable operation of air transport services, optimising capacity and facilitating the free movement of goods, persons and services.
- (2) The adoption by the European Parliament and the Council of the first package of the single European sky legislation, namely, Regulation (EC) No 549/2004 of 10 March 2004 laying down the framework for the creation of the single European sky (the framework Regulation) ⁽⁴⁾, Regulation (EC) No 550/2004 of 10 March 2004 on the provision of air navigation services in the single European sky (the service provision Regulation) ⁽⁵⁾, Regulation (EC) No 551/2004 of 10 March 2004 on the organisation and use of the airspace in the single European sky (the airspace Regulation) ⁽⁶⁾, and Regulation (EC) No 552/2004 of 10 March 2004 on the interoperability of the European air traffic management network (the interoperability Regulation) ⁽⁷⁾ laid down a firm legal basis for a seamless, interoperable and safe air traffic management (ATM) system.

- (3) In response to strong demand from industry, Member States and other stakeholders to simplify and increase the effectiveness of the regulatory framework for aviation in Europe, a high level group on the future of the European aviation regulatory framework (the High Level Group) was established in November 2006. The High Level Group, made up of representatives of the majority of stakeholders, submitted a report in July 2007 containing recommendations on how to improve the performance and governance of the European aviation system. The High Level Group recommended according the environment the same importance as safety and efficiency in the aviation system and insisted that industry and regulators should work together to ensure that ATM contributes as much as possible to sustainability.

- (4) At its meeting of 7 April 2008 the Council invited the Commission to develop, in accordance with the recommendations of the High Level Group, an overall system approach in line with the gate-to-gate concept to enhance safety, improve ATM and to increase cost efficiency.

- (5) In order to complete the creation of the single European sky, it is necessary to adopt additional measures at Community level, in particular, to improve the performance of the European aviation system in key areas such as the environment, capacity and cost-efficiency, all having regard to the overriding safety objectives. It is also necessary to adapt the single European sky legislation to technical progress.

- (6) 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) ⁽⁸⁾ calls for the development and implementation of an ATM Master Plan. The implementation of the ATM Master Plan requires regulatory measures to support the development, introduction and financing of new concepts and technologies. It should result in a system composed of fully harmonised and interoperable components, which guarantee high performance air transport activities in Europe. The schedule for implementation of the single European sky should take into consideration the timescale foreseen for the development and deployment phases of the SESAR programme as a part of the single European sky. Both processes should be closely coordinated.

⁽¹⁾ OJ C 182, 4.8.2009, p. 50.

⁽²⁾ OJ C 120, 28.5.2009, p. 52.

⁽³⁾ Opinion of the European Parliament of 25 March 2009 (not yet published in the Official Journal) and Council Decision of 7 September 2009.

⁽⁴⁾ OJ L 96, 31.3.2004, p. 1.

⁽⁵⁾ OJ L 96, 31.3.2004, p. 10.

⁽⁶⁾ OJ L 96, 31.3.2004, p. 20.

⁽⁷⁾ OJ L 96, 31.3.2004, p. 26.

⁽⁸⁾ OJ L 64, 2.3.2007, p. 1.

- (7) The concept of common projects, aimed at assisting airspace users and/or air navigation service providers to improve collective air navigation infrastructure, the provision of air navigation services and the use of airspace, in particular those that may be required for the implementation of the ATM Master Plan, should not prejudice pre-existing projects decided by one or several Member States with similar objectives. The provisions on financing of the deployment of common projects should not prejudge the manner in which these common projects are set up. The Commission may propose that funding, such as Trans-European Network or European Investment Bank funding, may be used in support of common projects, in particular to speed up the deployment of the SESAR programme, within the multiannual financial framework. Without prejudice to access to that funding, Member States should be free to decide how revenues generated by the auctioning of aviation sector allowances under the Emissions Trading Scheme are to be used and to consider in this context whether a share of such revenues might be used to finance common projects at the level of functional airspace blocks.
- (8) In particular where common projects are deployed, care should be taken, inter alia, through the application of comprehensive and transparent accounting, to ensure that airspace users are not double-charged. Common projects should be deployed to the benefit of all stakeholders and should ensure equal treatment thereof.
- (9) To ensure the consistent and sound oversight of service provision across Europe, the national supervisory authorities should be guaranteed sufficient independence and resources. This independence should not prevent those authorities from exercising their tasks within an administrative framework.
- (10) National supervisory authorities have a key role to play in the implementation of the single European sky and the Commission should therefore facilitate cooperation among them in order to enable the exchange of best practices and to develop a common approach, including through enhanced cooperation at regional level. This cooperation should take place on a regular basis.
- (11) The social partners should be better informed and consulted on all measures having significant social implications. At Community level, the Sectoral Dialogue Committee set up under Commission Decision 98/500/EC⁽¹⁾ should also be consulted.
- (12) To drive improved performance of ATM and air navigation services (ANS), it is necessary to establish a framework for the definition, implementation and enforcement of binding performance targets in key performance areas in line with the policies of the International Civil Aviation Organisation (ICAO). An indispensable feature of such a framework should be an appropriate mechanism for reporting, examining, evaluating and disseminating performance data of ATM and ANS along with a relevant incentive scheme to encourage achievement of the targets.
- (13) National supervisory authorities should have the flexibility to reflect specific national or regional circumstances when formulating their national and regional plans. When approving or adopting national plans, Member States should be entitled to make appropriate modifications.
- (14) When establishing charges for air navigation services the Commission and Member States should endeavour to use common forecasts. Some flexibility should be permitted in those cases where traffic diverges significantly from forecasts, in particular by using appropriate alert mechanisms.
- (15) The costs determined by the Member States at national level or at the level of a functional airspace block which are intended to be shared among airspace users should take account of performance targets.
- (16) For the cross-border provision of services, Member States should ensure that the designation of an air traffic service provider is not prohibited by any national legal system on the grounds that it is established in another Member State or is owned by nationals of that Member State.
- (17) The national supervisory authorities should take appropriate measures to ensure a high level of safety including the possibility of issuing an individual certificate for each type of air navigation service, while respecting the need for cost-efficiency and consistency and avoiding duplication.
- (18) The functional airspace blocks are key enablers for enhancing cooperation between air navigation service providers in order to improve performance and create synergies. Member States should establish functional airspace blocks within a reasonable time-frame. For that purpose and in order to optimise the interface of functional airspace blocks in the single European sky, the Member States concerned should cooperate with each other and where appropriate they should also cooperate with third countries.
- (19) When Member States establish a functional airspace block, other Member States, the Commission and other interested parties have an opportunity to submit their observations with the aim of facilitating an exchange of views. Those observations should be merely of an advisory nature for the Member State(s) concerned.

(¹) OJ L 225, 12.8.1998, p. 27.

- (20) In case of difficulties in the negotiation process with regard to the setting up of functional airspace blocks, the Commission may designate a Functional Airspace Blocks System Coordinator (the Coordinator). The tasks of the Coordinator should aim at providing assistance in overcoming such difficulties without interfering with the sovereignty of the Member State(s) concerned and, where appropriate, that of third countries taking part in the same functional airspace block. Costs incurred for the activities of the Coordinator should not have any impact on Member States' national budgets.
- (21) The reports of the Eurocontrol Performance Review Commission and the final report of the High Level Group confirm that the route network and airspace structure cannot 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. A progressively more integrated operating airspace should therefore be established for general air traffic.
- (22) In view of the creation of functional airspace blocks and the setting up of the performance scheme, the Commission should determine and take into account the necessary conditions for the Community to create a Single European Flight Information Region (SEFIR), to be requested by the Member States from the ICAO in accordance with both the established procedures of that organisation and the rights, obligations and responsibilities of Member States under the Convention on International Civil Aviation, signed in Chicago on 7 December 1944 (the Chicago Convention). By encompassing the airspace under the responsibility of the Member States, the SEFIR should facilitate common planning and integrated operations in order to overcome regional bottlenecks. Such a SEFIR should include the necessary flexibility to reflect specific needs such as traffic density and the level of complexity required.
- (23) Airspace users face disparate conditions of access to, and freedom of movement within, Community airspace. This is due to the lack of harmonised Community rules of the air, and, in particular, the lack of a harmonised classification of airspace. The Commission should therefore harmonise such rules on the basis of ICAO standards.
- (24) The EATMN should be designed and implemented with a view to achieving the safety, environmental sustainability, capacity enhancement and improved cost-efficiency of the whole air transport network. As highlighted in the Eurocontrol performance review Commission's report entitled 'Evaluation of functional airspace block initiatives and their contribution to performance improvement' of 31 October 2008, this could be best ensured through coordinated air transport network management at Community level.
- (25) In line with the Statement by the Member States on military issues related to the single European sky accompanying Regulation (EC) No 549/2004, civil-military cooperation and coordination should play a fundamental role in the implementation of the single European sky, in order to move towards an enhanced flexible use of airspace for the achievement of the single European sky performance objectives, having due regard to military mission effectiveness.
- (26) It is essential to achieve a common, harmonised airspace structure in terms of routes, to base the present and future organisation of airspace on common principles, to ensure the progressive implementation of the ATM Master Plan, to optimise the use of scarce resources to avoid unnecessary equipage costs, and to design and manage airspace in accordance with harmonised rules. To this end, the Commission should be responsible for adopting the necessary rules and implementing decisions with legally binding effect.
- (27) The list of functions for network management and design should be amended to integrate, if necessary, future network functions defined by the ATM Master Plan. In doing so, the Commission should make the best possible use of the expertise of Eurocontrol.
- (28) The High Level Group has recommended building new or enhanced functions upon existing foundations and enhancing the role of Eurocontrol, while positioning the Community as the single regulator and respecting the principle of separation of regulation from service provision. Accordingly, the Commission should entrust a reformed Eurocontrol, which has new governance arrangements in place, with the execution of tasks related to various functions, which do not involve the adoption of binding measures of a general scope or the exercise of political discretion. The execution of these tasks by Eurocontrol should be done in an impartial and cost-effective manner and with the full involvement of the airspace users and air navigation service providers.
- (29) 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. Furthermore, the Commission communication on an action plan for airport capacity, efficiency and safety in Europe highlights the need to ensure operational consistency between flight plans and airport slots. In addition, the Community Observatory on Airport Capacity could help in providing Member States with objective information in order to align airport capacity with ATM capacity, without prejudice to their competences in this area.

- (30) The provision of modern, complete, high-quality and timely aeronautical information has a significant impact on safety and on facilitating access to Community airspace and freedom of movement within it. Taking account of the ATM Master Plan, the Community should take the initiative to modernise this sector in cooperation with Eurocontrol and ensure that users are able to access those data through a single public point of access, providing a modern, user-friendly and validated integrated briefing.
- (31) For the electronic portal on meteorological information, the Commission should take into account the various sources of information including from designated service providers, where relevant.
- (32) To avoid unnecessary administrative burden and overlapping verification procedures, certificates issued in accordance with Regulation (EC) No 216/2008 of the European Parliament and of the Council of 20 February 2008 on common rules in the field of civil aviation and establishing a European Aviation Safety Agency ⁽¹⁾ should be accepted for the purposes of this Regulation, where they apply to constituents or systems.
- (33) A certificate issued in accordance with Regulation (EC) No 216/2008 and used to demonstrate an alternative means of compliance with the essential requirements of Regulation (EC) No 552/2004, should be accompanied by a technical file as required for the purposes of certification by the European Aviation Safety Agency (EASA).
- (34) Certain requirements of Regulation (EC) No 552/2004 should not apply to systems put into operation before 20 October 2005. National supervisory authorities and air navigation service providers should have the freedom to agree, at national level, the procedures and documentation required to demonstrate compliance of ATM systems in operation before 20 October 2005 with the essential requirements of Regulation (EC) No 552/2004. Implementing rules and Community specifications adopted after the adoption of this Regulation should take account of this arrangement and this should not result in a retroactive requirement for documentary evidence.
- (35) The High Level Group recommended in its final report to the Commission that the SESAR programme should address specifically the definition of interoperable procedures, systems and information exchange within Europe and with the rest of the world. This should also include the development of relevant standards and the identification of new implementing rules or Community specifications in the context of the single European sky.
- (36) When adopting implementing measures including standards laid down by Eurocontrol, the Commission should ensure that the measures include all necessary improvements to the original standards and take full account of the need to avoid double regulation.
- (37) The simultaneous pursuit of the goals of augmentation of air traffic safety standards and improvement of the overall performance of ATM and ANS for general air traffic in Europe require that the human factor be taken into account. Therefore the Member States should consider the introduction of 'just culture' principles.
- (38) In view of the proposed extension of the competences of the EASA to include air traffic management safety, consistency should be ensured between Regulations (EC) No 549/2004, (EC) No 550/2004, (EC) No 551/2004, (EC) No 552/2004 and (EC) No 216/2008.
- (39) 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 ⁽²⁾. Those measures should be adopted within a suitable time-frame in order to meet the deadlines set out in this Regulation and Regulations (EC) No 549/2004, (EC) No 550/2004, (EC) No 551/2004, (EC) No 552/2004 and (EC) No 216/2008.
- (40) In particular, the Commission should be empowered to update measures due to technical or operational developments as well as to lay down the basic criteria and procedures for the exercise of certain network management functions. Since those measures are of a general scope and are designed to amend non-essential elements of Regulations (EC) No 549/2004, (EC) No 550/2004, (EC) No 551/2004 and (EC) No 552/2004 by supplementing them with new non-essential elements, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC.
- (41) When on imperative grounds of urgency the normal time limits for the regulatory procedure with scrutiny cannot be complied with, the Commission should be able to use the urgency procedure provided for in Article 5a(6) of Decision 1999/468/EC.
- (42) The Ministerial Statement on Gibraltar Airport, agreed in Córdoba on 18 September 2006 (the Ministerial Statement), during the first Ministerial meeting of the Forum of Dialogue on Gibraltar, will replace the Joint Declaration on the Airport made in London on 2 December 1987, and the full compliance with that Statement will be deemed to constitute compliance with the 1987 Declaration.

(¹) OJ L 79, 19.3.2008, p. 1.

(²) OJ L 184, 17.7.1999, p. 23.

- (43) This Regulation applies in full to Gibraltar Airport in the context and by virtue of the Ministerial Statement. Without prejudice to the Ministerial Statement the application to Gibraltar Airport and all the measures related to its implementation shall conform fully with that Statement and all the arrangements contained therein.
- (44) Regulations (EC) No 549/2004, (EC) No 550/2004, (EC) No 551/2004 and (EC) No 552/2004 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 549/2004 shall be amended as follows:

1. Article 1 is replaced by the following:

'Article 1

Objective and scope

1. The objective of the single European sky initiative is to enhance current air traffic safety standards, to contribute to the sustainable development of the air transport system and to improve the overall performance of air traffic management (ATM) and air navigation services (ANS) for general air traffic in Europe, with a view to meeting the requirements of all airspace users. This single European sky shall comprise a coherent pan-European network of routes, network management and air traffic management systems based only on safety, efficiency and technical considerations, for the benefit of all airspace users. In pursuit of this objective, this Regulation establishes a harmonised regulatory framework for the creation of the single European sky.

2. The application of this Regulation and of the measures referred to in Article 3 shall be without prejudice to Member States' sovereignty over their airspace and to the requirements of the Member States 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 Member States under the 1944 Chicago Convention on International Civil Aviation (the Chicago Convention). In this context, an additional objective of this Regulation is, in the fields it covers, to assist Member States in fulfilling their obligations under the Chicago Convention, by providing a basis for a common interpretation and uniform implementation of its provisions, and by ensuring that these provisions are duly taken into account in this Regulation and in the rules drawn up for its implementation.

4. The application of this Regulation to the airport of Gibraltar is understood to be without prejudice to the respective legal positions of the Kingdom of Spain and the United Kingdom of Great Britain and Northern Ireland with regard to the dispute over sovereignty over the territory in which the airport is situated.;

2. Article 2 is amended as follows:

- (a) point 8 is replaced by the following:

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

- (b) point 10 is replaced by the following:

'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;';

- (c) the following point is inserted:

'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) (**);

(*) OJ L 95, 9.4.2009, p. 41.

(**) OJ L 64, 2.3.2007, p. 1.;

- (d) point 15 is replaced by the following:

'15. "certificate" means a document issued by a national supervisory authority in any form complying with national law, which confirms that an air navigation service provider meets the requirements for providing a specific service;';

- (e) point 21 is deleted;

- (f) point 22 is replaced by the following:

'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;';

(g) the following points are inserted:

‘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;’

(h) point 25 is replaced by the following:

‘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;’

(i) point 37 is deleted;

(j) the following point is added:

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

3. Article 4 is replaced by the following:

‘Article 4

National supervisory authorities

1. Member States shall, jointly or individually, either nominate or establish a body or bodies as their 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 authorities 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 authorities and such providers.

3. National supervisory authorities shall exercise their powers impartially, independently and transparently. This shall be achieved by applying appropriate management and control mechanisms, including within the administration of a Member State. However, this shall not prevent the national supervisory authorities from exercising their tasks within the rules of organisation of national civil aviation authorities or any other public bodies.

4. Member States shall ensure that national supervisory authorities have the necessary resources and capabilities to carry out the tasks assigned to them under this Regulation 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.’;

4. Article 5(4) is replaced by the following:

‘4. Where reference is made to this paragraph, Article 5a(1) to (4) and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

5. Where reference is made to this paragraph, Article 5a(1), (2), (4),(6) and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.’;

5. Articles 6 to 11 are replaced by the following:

‘Article 6

Industry consultation body

Without prejudice to the role of the Committee and of Eurocontrol, the Commission shall establish an “industry consultation body”, to which air navigation service providers, associations of airspace users, airport operators, the manufacturing industry and professional staff representative bodies shall belong. The role of this body shall solely be to advise the Commission on the implementation of the single European sky.

Article 7

Relations with European third countries

The Community and its Member States shall aim at and support the extension of the single European sky to countries which are not members of the European Union. To that end, they shall endeavour, either in the framework of agreements concluded with neighbouring third countries or in the context of agreements on functional airspace blocks, to extend the application of this Regulation, and of the measures referred to in Article 3, to those countries.

Article 8

Implementing rules

1. For the development of implementing rules the Commission may issue mandates to Eurocontrol or, where appropriate, to another body, setting out the tasks to be performed and the timetable for this and taking into account the relevant deadlines laid down in this Regulation. The Commission shall act in accordance with the advisory procedure referred to in Article 5(2).

2. When the Commission intends to issue a mandate in accordance with paragraph 1 it shall endeavour to make the best use of existing arrangements for the involvement and consultation of all interested parties, where these arrangements correspond to Commission practices on transparency and consultation procedures and do not conflict with its institutional obligations.

Article 9

Penalties

The penalties that Member States shall lay down for infringements of this Regulation and of the measures referred to in Article 3 in particular by airspace users and service providers shall be effective, proportionate and dissuasive.

Article 10

Consultation of stakeholders

1. The Member States, acting in accordance with their national legislation, shall establish consultation mechanisms for appropriate involvement of stakeholders, including professional staff representative bodies, in the implementation of the single European sky.

2. The Commission shall establish a consultation mechanism at Community level. The specific Sectoral Dialogue Committee set up under Decision 98/500/EC shall be involved in the consultation.

3. Consultation of stakeholders shall cover, in particular, the development and introduction of new concepts and technologies in the EATMN.

The stakeholders may include:

- air navigation service providers,
- airport operators,
- relevant airspace users or relevant groups representing airspace users,
- military authorities,
- manufacturing industry, and,
- professional staff representative bodies.

Article 11

Performance scheme

1. To improve the performance of air navigation services and network functions in the single European sky, a performance scheme for air navigation services and network functions shall be set up. It shall include:

- (a) Community-wide performance targets on the key performance areas of safety, the environment, capacity and cost-efficiency;

- (b) national plans or plans for functional airspace blocks, including performance targets, ensuring consistency with the Community-wide performance targets; and

- (c) periodic review, monitoring and benchmarking of the performance of air navigation services and network functions.

2. In accordance with the regulatory procedure referred to in Article 5(3), the Commission may designate Eurocontrol or another impartial and competent body to act as a “performance review body”. The role of the performance review body shall be to assist the Commission, in coordination with the national supervisory authorities, and to assist the national supervisory authorities on request in the implementation of the performance scheme referred to in paragraph 1. The Commission shall ensure that the performance review body acts independently when carrying out the tasks entrusted to it by the Commission.

- 3. (a) The Community-wide performance targets for the air traffic management network shall be adopted by the Commission in accordance with the regulatory procedure referred to in Article 5(3), after taking into account the relevant inputs from national supervisory authorities at national level or at the level of functional airspace blocks.

- (b) The national or functional airspace block plans referred to in point (b) of paragraph 1 shall be drawn up by national supervisory authorities and adopted by the Member State(s). These plans shall include binding national targets or targets at the level of functional airspace blocks and an appropriate incentive scheme as adopted by the Member State(s). Drafting of the plans shall be subject to consultation with air navigation service providers, airspace users’ representatives, and, where relevant, airport operators and airport coordinators.

- (c) The consistency of the national or functional airspace block targets with the Community-wide performance targets shall be assessed by the Commission using the assessment criteria referred to in point (d) of paragraph 6.

In the event that the Commission identifies that one or more national or functional airspace block targets do not meet the assessment criteria, it may decide, in accordance with the advisory procedure referred to in Article 5(2), to issue a recommendation that the national supervisory authorities concerned propose revised performance target(s). The Member State(s) concerned shall adopt revised performance targets and appropriate measures which shall be notified to the Commission in due time.

Where the Commission finds that the revised performance targets and appropriate measures are not adequate, it may decide, in accordance with the regulatory procedure referred to in Article 5(3), that the Member States concerned shall take corrective measures.

Alternatively, the Commission may decide, with adequate supporting evidence, to revise the Community-wide performance targets in accordance with the regulatory procedure referred to in Article 5(3).

- (d) The reference period for the performance scheme shall cover a minimum of three years and a maximum of five years. During this period, in the event that the national or functional airspace block targets are not met, the Member States and/or the national supervisory authorities shall apply the appropriate measures they have defined. The first reference period shall cover the first three years following the adoption of the implementing rules referred to in paragraph 6.
- (e) The Commission shall carry out regular assessments of the achievement of the performance targets and present the results to the Single Sky Committee.

4. The following procedures shall apply to the performance scheme referred to in paragraph 1:

- (a) collection, validation, examination, evaluation and dissemination of relevant data related to the performance of air navigation services and network functions from all relevant parties, including air navigation service providers, airspace users, airport operators, national supervisory authorities, Member States and Eurocontrol;
- (b) selection of appropriate key performance areas on the basis of ICAO Document No 9854 'Global air traffic management operational concept', and consistent with those identified in the Performance Framework of the ATM Master Plan, including safety, the environment, capacity and cost-efficiency areas, adapted where necessary in order to take into account the specific needs of the single European sky and relevant objectives for these areas and definition of a limited set of key performance indicators for measuring performance;
- (c) establishment of Community-wide performance targets that shall be defined taking into consideration inputs identified at national level or at the level of functional airspace blocks;
- (d) assessment of the national or functional airspace block performance targets on the basis of the national or functional airspace block plan; and

- (e) monitoring of the national or functional airspace block performance plans, including appropriate alert mechanisms.

The Commission may add to the list of procedures referred to in this paragraph. These measures designed to amend non-essential elements of this Regulation, by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 5(4).

5. The establishment of the performance scheme shall take into account that en route services, terminal services and network functions are different and should be treated accordingly, if necessary also for performance-measuring purposes.

6. For the detailed functioning of the performance scheme, the Commission shall by 4 December 2011 and within a suitable time-frame with a view to meeting the relevant deadlines laid down in this Regulation, adopt implementing rules in accordance with the regulatory procedure referred to in Article 5(3). These implementing rules shall cover the following:

- (a) the content and timetable of the procedures referred to in paragraph 4;
- (b) the reference period and intervals for the assessment of the achievement of performance targets and setting of new targets;
- (c) criteria for the setting up by the national supervisory authorities of the national or functional airspace block performance plans, containing the national or functional airspace block performance targets and the incentive scheme. The performance plans shall:
 - (i) be based on the business plans of the air navigation service providers;
 - (ii) address all cost components of the national or functional airspace block cost base;
 - (iii) include binding performance targets consistent with the Community-wide performance targets;
- (d) criteria to assess whether the national or functional airspace block targets are consistent with the Community-wide performance targets during the reference period and to support alert mechanisms;
- (e) general principles for the setting up by Member States of the incentive scheme;
- (f) principles for the application of a transitional mechanism necessary for the adaptation to the functioning of the performance scheme not exceeding 12 months following the adoption of the implementing rules.;

6. Article 12 is amended as follows:

(a) paragraph 2 is replaced by the following:

'2. The Commission shall periodically review the application of this Regulation and of the measures referred to in Article 3, and shall firstly report to the European Parliament and to the Council by 4 June 2011, and at the end of each reference period referred to in Article 11(3)(d) thereafter. When justified for this purpose, the Commission may request from the Member States information additional to the information contained in the reports submitted by them in accordance with paragraph 1 of this Article.;

(b) paragraph 4 is replaced by the following:

'4. The reports shall contain an evaluation of the results achieved by the actions taken pursuant to this Regulation 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, in the light of the original objectives and with a view to future needs.;

7. the following Article is inserted:

'Article 13a

European Aviation Safety Agency

When implementing this Regulation and Regulations (EC) No 550/2004, (EC) No 551/2004, (EC) No 552/2004 and Regulation (EC) No 216/2008 of the European Parliament and of the Council of 20 February 2008 on common rules in the field of civil aviation and establishing a European Aviation Safety Agency (*), Member States and the Commission, in accordance with their respective roles as provided for by this Regulation, shall coordinate as appropriate with the European Aviation Safety Agency to ensure that all safety aspects are properly addressed.

(* OJ L 79, 19.3.2008, p. 1.'

Article 2

Regulation (EC) No 550/2004 shall be amended as follows:

1. Articles 2 to 4 are replaced by the following:

'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.;

2. Article 5 is deleted;

3. in Article 7, paragraphs 6 and 7 are replaced by the following:

'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.;

4. Article 8 is replaced by the following:

*'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.;

5. the following Articles are inserted:

*'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;

6. Article 11 is replaced by the following:

'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.;

7. Article 12(3) is replaced by the following:

'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.;

8. Article 14 is replaced by the following:

'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.;

9. Article 15 is replaced by the following:

'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.;

10. the following Article is inserted:

'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.;

11. Articles 16 to 18 are replaced by the following:

'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.

*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.;

12. the following Article is inserted:

'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.;

13. Annex I is amended as follows:

(a) the title shall be replaced by the following:

'REQUIREMENTS FOR QUALIFIED ENTITIES';

(b) the introductory wording shall be replaced by the following:

'The qualified entities must:'.

Article 3

Regulation (EC) No 551/2004 shall be amended as follows:

1. Article 2 is deleted;
2. Article 3 is replaced by the following:

'Article 3

European Upper Flight Information Region (EUIR)

1. The Community and its Member States shall aim at the establishment and recognition by the ICAO of a single EUIR. To that effect, for matters which fall within the competence of the Community, the Commission shall submit a recommendation to the Council in accordance with Article 300 of the Treaty at the latest by 4 December 2011.

2. The EUIR shall be designed to encompass the airspace falling under the responsibility of the Member States in accordance with Article 1(3) and may also include airspace of European third countries.

3. The establishment of the EUIR shall be without prejudice to the responsibility of Member States for the designation of air traffic service providers for the airspace under their responsibility in accordance with Article 8(1) of the service provision Regulation.

4. Member States shall retain their responsibilities towards the ICAO within the geographical limits of the upper flight information regions and flight information regions entrusted to them by the ICAO on the date of entry into force of this Regulation.;

3. the following Article is inserted:

'Article 3a

Electronic aeronautical information

1. Without prejudice to the publication by Member States of aeronautical information and in a manner consistent with that publication, the Commission, working in cooperation 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 Commission shall:

- (a) ensure the development of a Community-wide 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 close cooperation with Eurocontrol and the ICAO.

3. 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.;

4. Article 4 is replaced by the following:

'Article 4

Rules of the air and airspace classification

The Commission shall, in accordance with the regulatory procedure referred to in Article 5(3) of the framework Regulation, adopt implementing rules in order 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, in order to ensure the seamless provision of safe and efficient air traffic services within the single European sky.;

5. Article 5 is deleted;

6. Article 6 is replaced by the following:

'Article 6

Network management and design

1. The air traffic management (ATM) network functions shall allow optimum use of airspace and ensure that airspace users can operate preferred trajectories, while allowing maximum access to airspace and air navigation services. These network functions shall be aimed at supporting initiatives at national level and at the level of functional airspace blocks and shall be executed in a manner which respects the separation of regulatory and operational tasks.

2. In order to achieve the objectives referred to in paragraph 1 and without prejudice to the responsibilities of the Member States with regard to national routes and airspace structures, the Commission shall ensure that the following functions are carried out:

(a) design of the European route network;

(b) coordination of scarce resources within aviation frequency bands used by general air traffic, in particular radio frequencies as well as coordination of radar transponder codes.

The functions listed in the first subparagraph shall not involve the adoption of binding measures of a general scope or the exercise of political discretion. They shall take into account proposals established at national level and at the level of functional airspace blocks. They shall be performed in coordination with military authorities in accordance with agreed procedures concerning the flexible use of airspace.

The Commission may, after consultation of the Single Sky Committee and in conformity with the implementing rules referred to in paragraph 4, entrust to Eurocontrol, or another impartial and competent body, the tasks necessary for the execution of the functions listed in the first subparagraph. These tasks shall be executed in an impartial and cost-effective manner and performed on behalf of Member States and stakeholders. They shall be subject to appropriate governance, which recognises the separate accountabilities for service provision and regulation, taking into consideration the needs of the whole ATM network and with the full involvement of the airspace users and air navigation service providers.

3. The Commission may add to the list of the functions in paragraph 2 after proper consultation of industry stakeholders. Those measures, designed to amend non-essential elements of this Regulation by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 5(4) of the framework Regulation.

4. Detailed rules for the implementation of the measures referred to in this Article, except for those referred to in paragraphs 6 to 9, shall be adopted in accordance with the regulatory procedure referred to in Article 5(3) of the framework Regulation. Those implementing rules shall address in particular:

(a) the coordination and harmonisation of processes and procedures to enhance the efficiency of aeronautical frequency management including the development of principles and criteria;

(b) the central function to coordinate the early identification and resolution of frequency needs in the bands allocated to European general air traffic to support the design and operation of European aviation network;

(c) additional network functions as defined in the ATM Master Plan;

(d) detailed arrangements for cooperative decision-making between the Member States, the air navigation service providers and the network management function for the tasks referred to in paragraph 2;

(e) arrangements for consultation of the relevant stakeholders in the decision-making process both at national and European levels; and

(f) within the radio spectrum allocated to general air traffic by the International Telecommunication Union, a division of tasks and responsibilities between the network management function and national frequency managers, ensuring that the national frequency management functions continue to perform those frequency assignments that have no impact on the network. For those cases which do have an impact on the network, the national frequency managers shall cooperate with those responsible for the network management function to optimise the use of frequencies.

5. Aspects of airspace design other than those referred to in paragraph 2 shall be dealt with at national level or at the level of functional airspace blocks. This design process shall take into account traffic demands and complexity, national or functional airspace block performance plans and shall include full consultation of relevant airspace users or relevant groups representing airspace users and military authorities as appropriate.

6. Member States shall entrust Eurocontrol or another impartial and competent body with the performance of air traffic flow management, subject to appropriate oversight arrangements.

7. Implementing rules for air traffic flow management, including the necessary oversight arrangements, shall be developed in accordance with the advisory procedure referred to in Article 5(2) of the framework Regulation and adopted in accordance with the regulatory procedure referred to in Article 5(3) of the framework Regulation, with a view to optimising available capacity in the use of airspace and enhancing air traffic flow management processes. These rules 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. The implementing rules for air traffic flow management 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:
 - 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 the implementing rules the Commission 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.;

7. Article 9 is deleted.

Article 4

Regulation (EC) No 552/2004 shall be amended as follows:

1. the following Article is inserted:

'Article 6a

Alternative verification of compliance

A certificate issued in accordance with Regulation (EC) No 216/2008 of the European Parliament and of the Council of 20 February 2008 on common rules in the field of civil aviation and establishing a European Aviation Safety Agency (*), where it applies to constituents or systems, shall be considered, for the purposes of Articles 5 and 6 of this Regulation, as an EC declaration of conformity or suitability for use, or as an EC declaration of verification, if it includes a demonstration of compliance with the essential requirements of this Regulation and the relevant implementing rules for interoperability.

(*) OJ L 79, 19.3.2008, p. 1.;

2. Article 9 is replaced by the following:

'Article 9

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.;

3. in Article 10 the following paragraph is inserted:

'2a. For the purposes of paragraph 2 of this Article, Member States may declare systems and constituents of the EATMN as compliant with the essential requirements and exempt from the provisions of Articles 5 and 6.;

4. Annex II is amended as follows:

- (a) in Part A, the first paragraph of point 2, is replaced by the following:

'The EATMN, its systems and their constituents shall support, on a coordinated basis, new agreed and validated concepts of operation that improve the quality, sustainability and effectiveness of air navigation services, in particular in terms of safety and capacity.;

- (b) Part B is amended as follows:

- (i) the first paragraph of point 3.1.2, is replaced by the following:

'Flight data processing systems shall accommodate the progressive implementation of advanced, agreed and validated concepts of operation for all phases of flight, in particular as envisaged in the ATM Master Plan.;

- (ii) point 3.2.2 is replaced by the following:

'3.2.2. Support for new concepts of operation

Surveillance data processing systems shall accommodate the progressive availability of

new sources of surveillance information in such a way as to improve the overall quality of service, in particular as envisaged in the ATM Master Plan.;

- (iii) point 4.2 is replaced by the following:

'4.2. Support for new concepts of operation

Communication systems shall support the implementation of advanced, agreed and validated concepts of operation for all phases of flight, in particular as envisaged in the ATM Master Plan.'

Article 5

Entry into force

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

Article 6(2) and (6) of Regulation (EC) No 551/2004, as amended by this Regulation, shall apply from the date specified in their respective implementing rules but no later than 4 December 2012.

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

Done at Strasbourg, 21 October 2009.

For the European Parliament
The President
J. BUZEK

For the Council
The President
C. MALMSTRÖM