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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels,  
COM(2008) 388

2008/0127 (COD)

Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**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**

(presented by the Commission)

{SEC(2008) 2093}

{SEC(2008) 2094}

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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<sup>1</sup>,

Having regard to the Opinion of the Committee of the Regions<sup>2</sup>,

Acting in accordance with the procedure laid down in Article 251 of the Treaty<sup>3</sup>,

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, thus facilitating the free movement of goods, persons and services.
- (2) The adoption by the European Parliament and the Council of Regulation (EC) No 549/2004 laying down the framework for the creation of the Single European Sky<sup>4</sup>, Regulation (EC) No 550/2004 on the provision of air navigation services in the Single European Sky<sup>5</sup>, Regulation (EC) No 551/2004 on the organisation and use of the airspace in the single European sky<sup>6</sup>, and Regulation (EC) No 552/2004 on the interoperability of the European air traffic management network<sup>7</sup> (the first package of the single European sky legislation) laid down a firm legal basis for a seamless, interoperable and safe air traffic management (ATM) system.
- (3) 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 safety, capacity, flight and cost efficiency and environment within the overriding safety objectives.

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<sup>1</sup> OJ C...

<sup>2</sup> OJ C...

<sup>3</sup> OJ C....

<sup>4</sup> OJ L 96, 31.3.2004, p. 1.

<sup>5</sup> OJ L 96, 31.3.2004, p. 10.

<sup>6</sup> OJ L 96, 31.3.2004, p. 20.

<sup>7</sup> OJ L 96, 31.3.2004, p. 26.

- (4) 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, the High Level Group on the future of the European aviation regulatory framework (hereinafter "the High Level Group") was established in November 2006. This Group, made up of representatives of most stakeholder groups, submitted a report in July 2007 containing a set of recommendations on how to improve the performance and governance of the European aviation system.
- (5) At its meeting of 7 April 2008 the Council of the European Union 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.
- (6) Council Regulation (EC) No 219/2007 of 27 February 2007 on the establishment of a Joint Undertaking to develop a new-generation European air traffic management system (SESAR)<sup>8</sup> 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.
- (7) 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.
- (8) To ensure the consistent and sound oversight of service provision across Europe, the national supervisory authorities should be guaranteed sufficient independence and resources.
- (9) The social partners should be better informed and consulted on all measures having significant social implications. The Sectoral Dialogue Committee set up under Commission Decision 98/500/EC of 20 May 1998 on the establishment of Sectoral Dialogue Committees promoting the Dialogue between the social partners at European level<sup>9</sup> should also be consulted.
- (10) 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 International Civil Aviation Organisation's (ICAO) policies. 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 relevant incentives and disincentives to encourage achievement of the targets.
- (11) It is necessary to adapt the first package of the single European sky legislation to technical progress.

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<sup>8</sup> OJ L 64, 2.3.2007, p. 1.

<sup>9</sup> OJ L 225, 12.8.1998, p. 27. Decision as last amended by Commission Regulation (EC) No 1792/2006 (OJ L 362, 20.12.2006, p. 1).

- (12) It should be clarified that Member States may not refuse to designate an air navigation service provider on the grounds that it is established in another Member State or is owned by nationals of that Member State.
- (13) The functional airspace blocks are key enablers to enhance cooperation between air navigation service providers in order to improve performance and create synergies. Member States should establish functional airspace blocks by the end of 2012 at the latest.
- (14) If the improvement of performance, in particular the implementation of the ATM Master Plan exceeds the resources currently available, provisions should be made to finance common projects.
- (15) 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.
- (16) A progressively more integrated operating airspace should therefore be established for general air traffic.
- (17) A European Flight Information Region (EFIR) encompassing the airspace under the responsibility of the Member States should facilitate common planning and integrated operations in order to overcome regional bottlenecks.
- (18) 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, in particular a harmonised classification of airspace. The Commission should therefore harmonise such rules on the basis of ICAO standards.
- (19) The EATMN should be designed and implemented with a view to the efficiency, safety and environmental sustainability of the whole air transport network. As highlighted in the Eurocontrol Performance Review Commission's report on 'Evaluation of Functional Airspace Block Initiatives and their Contribution to Performance Improvement', this could be best ensured through coordinated air transport network management at Community level.
- (20) 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.
- (21) The High Level Group recommended building new or enhanced functions on existing foundations and empowering 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 the functions mentioned in the previous recital, 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.

- (22) 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<sup>10</sup> highlights the need to ensure consistency between flight plans and airport slots.
- (23) The lack of modern, complete, high-quality and timely aeronautical information affects safety and causes airspace users to face disparate conditions for 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 these data through a single public point of access, providing a modern, user-friendly and validated integrated briefing.
- (24) 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, and repealing Council Directive 91/670/EEC, Regulation (EC) No 1592/2002 and Directive 2004/36/EC<sup>11</sup> should be accepted for the purposes of the present Regulation, where they apply to constituents or systems.
- (25) The High Level Group recommended in its final report to the Commission that the SESAR programme should specifically address 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.
- (26) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC laying down the procedures for the exercise of implementing powers conferred on the Commission<sup>12</sup>.
- (27) In particular, power should be conferred on the Commission 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 management network functions. Since those measures are of a general scope and are designed to amend non-essential elements of this Regulation or to supplement this Regulation by the addition of 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.
- (28) 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.

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<sup>10</sup> COM(2006) 819.

<sup>11</sup> OJ L 79, 19.3.2008, p. 1.

<sup>12</sup> OJ L 184, 17.7.1999, p. 23. Decision as amended by Decision 2006/512/EC (OJ L 200, 22.7.2006, p. 11).

- (29) 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 is amended as follows:

(1) Article 1(1) is replaced by the following:

'1. The objective of the single European sky initiative is to enhance current air transport safety standards, to contribute to the sustainable development of the air transport system and to improve the overall performance of the air traffic management (ATM) and air navigation services (ANS) system for general air traffic in Europe, with a view to meeting the requirements 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) 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 13a is inserted:

'13a. 'ATM Master Plan' means the plan to be endorsed by the Council in accordance with Article 1(2) of Council Regulation (EC) No 219/2007;'

(d) point 21 is deleted.

(e) 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;'

(f) 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 ancillary functions are optimised and/or integrated;'

(g) point 37 is deleted.

(3) Article 4 is replaced by the following:

*'Article 4*

#### **Designation and independence of national supervisory authorities**

1. Member States shall, at their choice, jointly or individually, 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(1).
2. Member States shall ensure that, when carrying out the tasks referred to in paragraph 1, the national supervisory authorities are at least functionally independent from any other public or private entity.
3. Member States shall ensure that the national supervisory authorities exercise their powers impartially and transparently. They shall also ensure that the staff of the national supervisory authorities and the persons responsible for their management act independently, impartially and transparently.
4. Member States shall ensure that national supervisory authorities have adequate human and financial resources to carry out their duties.
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) In Article 5, paragraph 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) Article 6 is 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, airports, the manufacturing industry and professional staff representative bodies shall belong. The role of this body shall be to advise the Commission on the implementation of the single European sky.'

(6) Article 8 is replaced by the following:

*'Article 8*

#### **Implementing rules**

1. The Commission shall adopt implementing rules where expressly provided in this Regulation or in the Regulations referred to in Article 3, or where it is otherwise necessary in order to achieve the objectives of those Regulations.
2. For the development of implementing rules the Commission may issue mandates to Eurocontrol setting out the tasks to be performed and the timetable for this. In this

connection, it shall endeavour to make best use of the arrangements of Eurocontrol 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. The Commission shall act in accordance with the procedure referred to in Article 5(2).

3. On the basis of the work completed pursuant to paragraph 2, decisions on the application of the results of such work within the Community and the deadline for their implementation shall be taken in accordance with the procedure referred to in Article 5(3).

4. The Commission may, acting in accordance with the procedure referred to in Article 5(3), adopt alternative measures to achieve the objectives of the mandate concerned:

- (a) if Eurocontrol cannot accept a mandate that was issued to it under paragraph 2, or
- (b) if the Commission, in consultation with the Committee, considers that:
  - (i) the work carried out on the basis of such a mandate is not progressing satisfactorily given the deadline set, or
  - (ii) the results of the work carried out are not adequate.

5. The Commission shall act in accordance with the procedure referred to in Article 5(3):

- (a) when the Commission decides not to issue a mandate to Eurocontrol under paragraph 2, or
- (b) when the implementing rules to be adopted fall outside the remit of Eurocontrol.'

(7) Article 10 is amended as follows:

- (a) in the second paragraph, the second indent is replaced by the following:  
'- all groups of airspace users,'
- (b) the third subparagraph is replaced by the following:  
'Consultation of stakeholders shall cover, in particular, the development and introduction of new concepts and technologies in the EATMN and shall include mechanisms for appropriate involvement of the specific Sectoral Dialogue Committee, set up under Commission Decision 98/500/EC\*.'

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\* OJ L 225, 12.8.1998, p. 27.

(8) Article 11 is replaced by the following:

*Article 11*

**Performance scheme**

1. To improve the performance of air navigation services and network functions in the single European sky, the Commission shall set up a performance scheme. The scheme shall include the following elements in particular:

- (a) periodic review, monitoring and benchmarking of performance of air navigation services and network functions as well as ad-hoc studies to deal with specific issues;
- (b) procedures and responsibilities for collection, validation, examination, evaluation and dissemination of data related to performance of air navigation services and network functions from all relevant parties, including airport operators, airport coordinators, air navigation service providers, airspace users, national supervisory authorities, Member States and Eurocontrol;
- (c) appropriate key performance areas on the basis of ICAO Document N° 9854 'Global Air Traffic Management Operational Concept'\*\*, adapted where necessary in order to take into account the specific needs of the single European sky and relevant objectives for these areas;
- (d) key performance indicators for measuring performance and set targets;
- (e) setting of Community-wide performance targets, their respective reference period covering a minimum of three years and a maximum of five years and appropriate convergence criteria in accordance with the procedure referred to in Article 5(3);
- (f) criteria for the national supervisory authorities' preparation of national or regional performance plans. These plans shall in particular:
  - be based on the business plans of the service providers;
  - address all the cost components of the national or regional cost base;
  - include binding performance targets consistent with the Community-wide performance targets;
  - be subject to consultation with air navigation service providers, airspace users' representatives, airport operators and airport coordinators;
- (g) criteria and procedures for the assessment, approval, monitoring and enforcement of the national or regional performance plans, including:
  - (i) assessment by the Commission of the national or regional performance plans to ensure that at least they collectively meet the Community-wide targets;
  - (ii) approval by the Commission of the national or regional performance plans, in accordance with the procedure referred to in Article 5(3);
  - (iii) monitoring of the implementation of the national or regional performance plans, including appropriate alert mechanisms;
  - (iv) assessment of the achievement of the performance targets annually and at the end of the reference period and setting of new targets for the next reference period;
  - (v) corrective measures, including appropriate incentives and/or disincentives, to be applied by Member States in the event that the national or regional targets are not met yearly or at the end of the reference period.

2. Without prejudice to the role of the Committee, the Commission may designate Eurocontrol or another competent public entity to act as a 'performance review body'. The role of the performance review body shall be to assist the Commission 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. The Commission shall adopt detailed implementing rules for this Article in accordance with Article 8.'

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\*\*First edition 2005.

(9) In Article 12, 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.'

#### *Article 2*

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

(1) In Article 2, paragraph 3 is replaced by the following:

'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. Further, these Member States shall endeavour to conclude an agreement on the supervision provided for in this Article, mutually recognising the supervision tasks already undertaken, also with regard to air navigation service providers providing services in a Member State other than that in which they have their principal place of operation.'

(2) Article 4 is replaced by the following:

*'Article 4*

#### **Safety requirements**

The Commission shall, in accordance with the 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 and improvements.'

(3) Article 5 is deleted.

(4) In Article 7, paragraph 6 is 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.'

(5) Article 8 is amended as follows:

(a) paragraph 1 is replaced by the following:

'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.

A Member State shall not refuse to designate an air traffic service provider on the grounds that its national legal system requires that air traffic service providers providing services in airspace under the responsibility of that Member State:

- (a) be owned directly or through a majority holding by that Member State or its nationals, or
- (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.'

(b) paragraph 4 is replaced by the following:

'4. 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, one or more air traffic service providers, at least one month before implementation of the airspace block.'

(6) The following Article 9a is inserted:

*Article 9a*

#### **Functional Airspace Blocks**

1. Member States shall take all necessary measures in order to ensure the establishment of functional airspace blocks as soon as possible and at the latest by the end of 2012 with a view to achieving maximum 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 with each other to the fullest extent possible in order to ensure compliance with this provision.

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) be justified by their overall added value, including optimal use of technical and human resources, on the basis of cost-benefit analyses;
- (d) ensure a smooth and flexible transfer of responsibility for air traffic control between air traffic service units;
- (e) ensure compatibility between the different airspace configurations;
- (f) comply with conditions stemming from regional agreements concluded within the ICAO; and

- (g) respect regional agreements in existence on the date of entry into force of this Regulation, in particular those involving European third countries.

3. A functional airspace block shall only be established by mutual agreement between all the Member States who have responsibility for any part of the airspace included in the functional airspace block, or by a declaration of one Member State if the airspace included in the block is wholly under its responsibility. Before establishing a functional airspace block the Member State(s) concerned shall provide the Commission, the other Member States and other interested parties with adequate information in order to assess its conformity with the criteria referred to in paragraph 2 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 this opinion into account in order to find a solution.

6. The decisions 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.

7. The Commission shall adopt detailed implementing rules for this Article in accordance with Article 8 of the framework Regulation.'

(7) In Article 12, paragraph 3 is replaced by the following:

'3. When providing a bundle of services, air navigation service providers shall identify and disclose in their financial accounts the relevant costs and income for 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 amended as follows:

(a) paragraph 2 is amended as follows:

(i) point (a) is replaced by the following:

'(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;'

(ii) point (b) is replaced by the following:

'(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 recognised organisations, 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 sanctions 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(1)(g)(v) of the framework Regulation;'

(iii) point (d) is replaced by the following:

'(d) cross-subsidy shall not be allowed between en-route services and terminal services. It 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;'

(b) paragraph 3 is amended as follows:

(i) the introductory sentence is replaced by the following:

'Member States shall comply with the following principles when setting charges in accordance with paragraph 2:'

(ii) the following point is inserted after point (b):

'(ba) charges shall be set per calendar year and cover at least a three year period, up to maximum five years;'

(iii) point (c) is replaced by the following:

'(c) Air navigation services may produce sufficient revenues to provide for a reasonable return on assets to contribute towards necessary capital improvements;'

(iv) point (e) is replaced by the following:

'(e) Charges shall encourage the safe, efficient, effective and sustainable provision of air navigation services with a view to a high level of safety and cost-efficiency and shall stimulate integrated service provision. To that end, and in relation to the national or regional 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.'

(c) paragraph 4 is replaced by the following:

'4. The Commission may decide, in accordance with the procedure referred to in Article 5(3) of the framework Regulation, that charges shall be used to finance common projects designed to assist specific categories of airspace users and/or air navigation service providers in order to improve collective air navigation infrastructures, 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. Such decisions shall identify the common project and specify in particular the timetable for implementation, the cost to be charged to airspace users and its allocation amongst Member States.

5. The Commission shall adopt detailed implementing rules for this Article in accordance with Article 8 of the framework Regulation.'

(10) In Article 16, paragraphs 1 and 2 are replaced by the following:

'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 and 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 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 and as to whether the practice concerned may continue.'

(11) Article 17 is replaced by the following:

*'Article 17*

#### **Revision of Annexes**

The 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.'

(12) In Article 18, paragraphs 1 and 2 are replaced by the following:

'1. Neither the national supervisory authorities, acting in accordance with their national legislation, nor the Commission shall disclose information of a confidential nature.

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.'

(13) The following Article 18a is inserted:

*'Article 18a*

### **Review**

1. As part of the periodical review referred to in Article 12(2) of the framework Regulation and no more than four years after the entry into force of this Regulation, the Commission shall finalise a prospective study on the conditions for the future application of market principles to the provision and designation of services in the fields of communication, navigation, surveillance, meteorology and aeronautical information.

2. On the basis of the study's conclusions and in the light of the progress achieved, the Commission shall submit a report to the European Parliament and the Council, accompanied, where appropriate, by a proposal to extend the application of market principles to one or more of the services referred to in paragraph 1 or to determine any other steps.'

### *Article 3*

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

(1) Article 2 is deleted.

(2) Article 3 is replaced by the following:

*'Article 3*

### **Single European Flight Information Region (EFIR)**

1. The Community and the Member States shall request ICAO to establish and recognise a single European Flight Information Region (EFIR). To this end, for matters which fall within the competence of the Community, the Commission shall, if necessary, submit a recommendation to the Council in accordance with Article 300 of the Treaty at the latest by [...] <sup>13</sup>.

2. The EFIR 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 EFIR 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

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<sup>13</sup> Date four years after the entry into force of the amending Regulation.

regions entrusted to them by the ICAO on the date of entry into force of this Regulation.'

(3) The following Article 3a is inserted:

*'Article 3a*

#### **Aeronautical information**

1. Without prejudice to the publication by Member States of aeronautical information, 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) develop a Community-wide aeronautical information infrastructure in the form of an electronic integrated briefing portal with unrestricted public access. This 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 ICAO.

3. The Commission shall adopt detailed implementing rules for this Article in accordance with Article 8 of the framework Regulation.'

(4) Article 4 is replaced by the following:

*'Article 4*

#### **Rules of the air and airspace classifications**

The Commission shall, in accordance with the procedure referred to in Article 8 of the framework Regulation, adopt implementing rules in order to:

- (a) incorporate the appropriate provisions of ICAO standards and recommended practices on rules of the air, where necessary with appropriate adaptations and improvements;
- (b) harmonise the application of the ICAO airspace classification, where necessary with appropriate adaptations and improvements, in order to ensure the seamless provision of air navigation 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 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.

2. In order to achieve the objectives referred to in paragraph 1, the Commission shall ensure that the following functions are carried out:

- (a) design of the European route network;
- (b) coordination and allocation of scarce resources, in particular radio frequencies and radar transponder codes;
- (c) additional functions for the ATM network, as defined in the ATM Master Plan.

The Commission may, under its own control and responsibility, entrust to Eurocontrol tasks relating to the execution of the above functions, which do not involve the adoption of binding measures of a general scope or the exercise of political discretion. These tasks shall be executed in an impartial and cost-effective manner; 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. Measures designed to amend non-essential elements of this Article, by supplementing it, relating to the definition of the basic criteria and procedures for the exercise of the functions referred to in paragraph 2 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 paragraph 3 shall be adopted in accordance with Article 8 of the framework Regulation. Individual measures provided in those implementing rules shall be adopted by the Commission. The implementing rules may provide that, on grounds of urgency, certain types of individual decisions shall be adopted by Eurocontrol in accordance with guidelines issued by the Commission.

5. Other aspects of airspace design than those referred to in paragraph 2 shall be dealt with at national or regional level. This design process shall take into account traffic demands and complexity and include full consultation of all groups of airspace users concerned.

6. Member States shall entrust Eurocontrol with the performance of air traffic flow management as specified in an implementing rule adopted in accordance with the procedure referred to in Article 5(3) of the framework regulation and in conformity with the requirements laid down by the Commission pursuant to Article 9.'

(7) In Article 9, the following paragraph 3 is added:

'3. The implementing rules shall include consistency between flight plans and airport slots and the necessary coordination with adjacent regions.'

#### *Article 4*

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

(1) The following Article 6a is inserted:

*'Article 6a*

#### **Alternative verification of compliance**

A certificate issued in accordance with Regulation (EC) No 216/2008, where it applies to constituents or systems, shall be considered, for 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 demonstration of compliance with the essential requirements of this Regulation and the relevant implementing rules for interoperability.'

(2) Article 9 is replaced by the following:

*'Article 9*

### **Revision of Annexes**

The 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.'

(3) Annex II is amended as follows:

(a) In part A, the first paragraph of point 2, Support for new concepts of operation, 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, Support for new concepts of operation, 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, Support for new concepts of operation, 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, Support for new concepts of operation, 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 twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 6(2) and (6) of Regulation (EC) No 551/2004 as amended by the present Regulation shall apply from the date specified in their respective implementing rules but not later than three years after the entry into force of this regulation.

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

Done at Brussels,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*

## LEGISLATIVE FINANCIAL STATEMENT

### 1. NAME OF THE PROPOSAL:

Regulation of the European Parliament and of the Council amending Regulation (EC) No 549/2004 laying down the framework for the creation of the Single European Sky, Regulation (EC) No 550/2004 for the provision of air navigation services in the Single European Sky, Regulation (EC) No 551/2004 for the organisation and use of the airspace in the Single European Sky, Regulation (EC) No 552/2004 on the interoperability of the European air traffic management network

### 2. ABM / ABB FRAMEWORK

Policy Area(s) concerned and associated Activity/Activities:

Activity: "Inland, air and maritime transport"

Objective: "Ensure the implementation of the internal market in transport services"

### 3. BUDGET LINES

#### 3.1. Budget lines (operational lines and related technical and administrative assistance lines (ex- B..A lines)) including headings:

06 02 03 – Transport safety

#### 3.2. Duration of the action and of the financial impact:

The proposals concern the amendment of Community legislation. In principle there is no limit on the duration. For practical reasons the expected date of adoption (2009) until the end of the financial perspectives (2013) is considered.

#### 3.3. Budgetary characteristics :

Budget line	Type of expenditure		New	EFTA contribution	Contributions from applicant countries	Heading in financial perspective
	Non-comp	Non-diff <sup>14</sup>	NO	NO	NO	No
	Non-comp	Diff	NO	NO	NO	No

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<sup>14</sup> Non-differentiated appropriations hereafter referred to as NDA.

## 4. SUMMARY OF RESOURCES

### 4.1. Financial Resources

#### 4.1.1. Summary of commitment appropriations (CA) and payment appropriations (PA)

EUR million (to 3 decimal places)

Expenditure type	Section no.		2008	2009	2010	2011	2012	2013	Total
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#### Operational expenditure<sup>15</sup>

Commitment Appropriations (CA)	8.1.	a		1.25	2.25	2.25	2.25	2.25	10.250
Payment Appropriations (PA)		b		1.25	2.25	2.25	2.25	2.25	10.250

#### Administrative expenditure within reference amount<sup>16</sup>

Technical & administrative assistance (NDA)	8.2.4.	c							
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#### TOTAL REFERENCE AMOUNT

Commitment Appropriations		a+c		1.25	2.25	2.25	2.25	2.25	10.250
Payment Appropriations		b+c		1.25	2.25	2.25	2.25	2.25	10.250

#### Administrative expenditure not included in reference amount<sup>17</sup>

Human resources and associated expenditure (NDA)	8.2.5.	d	0.117	0.117	0.234	0.234	0.234	0.234	1.170
Administrative costs, other than human resources and associated costs, not included in reference amount (NDA)	8.2.6.	e		0.058	0.058	0.058	0.058	0.058	0.290

#### Total indicative financial cost of intervention

TOTAL CA including cost of Human Resources		a+c +d +e	0.117	1.425	2.542	2.542	2.542	2.542	11.710
TOTAL PA including cost of Human Resources		b+c +d +e	0.117	1.425	2.542	2.542	2.542	2.542	11.710

<sup>15</sup> Expenditure that does not fall under Chapter xx 01 of the Title xx concerned.

<sup>16</sup> Expenditure within article xx 01 04 of Title xx.

<sup>17</sup> Expenditure within chapter xx 01 other than articles xx 01 04 or xx 01 05.

### Co-financing details

If the proposal involves co-financing by Member States, or other bodies (please specify which), an estimate of the level of this co-financing should be indicated in the table below (additional lines may be added if different bodies are foreseen for the provision of the co-financing):

EUR million (to 3 decimal places)

Co-financing body		Year n	n + 1	n + 2	n + 3	n + 4	n + 5 and later	Total
.....	f							
TOTAL CA including co-financing	a+c +d +e +f							

#### 4.1.2. Compatibility with Financial Programming

- Proposal is compatible with existing financial programming.
- Proposal will entail reprogramming of the relevant heading in the financial perspective.
- Proposal may require application of the provisions of the Interinstitutional Agreement<sup>18</sup> (i.e. flexibility instrument or revision of the financial perspective).

#### 4.1.3. Financial impact on Revenue

- Proposal has no financial implications on revenue
- Proposal has financial impact – the effect on revenue is as follows:

EUR million (to one decimal place)

Budget line		Revenue	Prior to action [Year n-1]	Situation following action						
				[Year n]	[n+1]	[n+2]	[n+3 ]	[n+4]	[n+5] <sup>19</sup>	
		a) Revenue in absolute terms								
		b) Change in revenue	Δ							

<sup>18</sup> See points 19 and 24 of the Interinstitutional agreement.

<sup>19</sup> Additional columns should be added if necessary i.e. if the duration of the action exceeds 6 years.

**4.2. Human Resources FTE (including officials, temporary and external staff) – see detail under point 8.2.1.**

<b>Annual requirements</b>	<b>Year 2008</b>	<b>n + 1</b>	<b>n + 2</b>	<b>n + 3</b>	<b>n + 4</b>	<b>n + 5 and later</b>
Total number of human resources	1	1	2	2	2	2

**5. CHARACTERISTICS AND OBJECTIVES**

**5.1. Need to be met in the short or long term**

Establishment and monitor implementation of legislation in the field of air traffic management.

**5.2. Value-added of Community involvement and coherence of the proposal with other financial instruments and possible synergy**

The development of the air transport market requires a solid infrastructure. Air traffic management is part of this infrastructure (together with airports). Efficiency of this trans-European network requires Community intervention, all the more because air traffic management is a natural monopoly.

The Single Sky legislation will facilitate the implementation and deployment of the SESAR Masterplan.

**5.3. Objectives, expected results and related indicators of the proposal in the context of the ABM framework**

Ensure implementation internal market in transport services.

The specific objectives concern the air navigation services. Increase performance of the network to promote the development of civil aviation through regulation of air traffic management. The current system of non-binding performance benchmarking is transformed into regulatory system to drive performance of the system. Commission is setting performance objectives, relying on an independent Performance Review Body. The Single European Sky committee, established by the current legislation, will also be involved in the regulatory procedure.

**5.4. Method of Implementation (indicative)**

*Centralised Management*

directly by the Commission

indirectly by delegation to:

executive Agencies

bodies set up by the Communities as referred to in art. 185 of the Financial Regulation

national public-sector bodies/bodies with public-service mission

*Shared or decentralised management*

- with Member states
- with Third countries
- Joint management with international organisations (please specify)*

Relevant comments:

## **6. MONITORING AND EVALUATION**

### **6.1. Monitoring system**

The effects on performance will not only be monitored, but performance review and regulation is the central idea of the reform. As natural monopolies, air traffic management will have to satisfy specific performance objectives. These objectives will be set also in close consultation with the airspace users, who finance the system and are the clients, and the air navigation service providers, the suppliers of services.

The Single Sky established an institutional framework which allows stakeholders, in particular airspace users, to voice their concerns on the efficiency of the measures.

### **6.2. Evaluation**

#### *6.2.1. Ex-ante evaluation*

The legislative proposals were prepared on the basis of two reports. The Commission requested the Performance Review Commission of Eurocontrol to undertake an independent evaluation of the impact of Single Sky on performance of the air traffic management system.

The High Level Group on the future aviation regulatory framework<sup>20</sup> indicated the political direction the proposals should take. The group called for consistent use of the ‘Community method’, with decisions taken at European level by qualified majority voting, while leaving implementation to a strong partnership between the Member States and the Community.

#### *6.2.2. Measures taken following an intermediate/ex-post evaluation (lessons learned from similar experiences in the past)*

The reports mentioned under 6.2.1 are based on the current single sky legislation, hence ex-post single sky I, ex-ante single sky II.

#### *6.2.3. Terms and frequency of future evaluation*

The proposals introduce yearly assessments (within 5 years planning periods) to regulate the performance of the system, hence requires an intense and permanent evaluation of the efficiency of the legislation.

## **7. ANTI-FRAUD MEASURES**

Not applicable.

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<sup>20</sup> High Level Group on the Future Aviation Regulatory Framework, 2007, ‘A framework for driving performance improvement’, Brussels, p. 47.

## 8. DETAILS OF RESOURCES

### 8.1. Objectives of the proposal in terms of their financial cost

(Headings of Objectives, actions and outputs should be provided)	Type of output	Av. cost	Year 2008 n		Year 2009 n+1		Year 2010 n+2		Year 2011 n+3		Year 2012 n+4		Year n+5 and later		TOTAL	
			No. outputs	Total cost	No. outputs	Total cost	No. outputs	Total cost	No. outputs	Total cost	No. outputs	Total cost	No. outputs	Total cost	No. outputs	Total cost
OPERATIONAL OBJECTIVE No.1 <sup>21</sup> Performance Regulation.....																
<b>Action 1: Support Eurocontrol Framework contract (06 0203)</b>	Evaluation of ATM industry with performance targets															
- Output 1			0		1		2		2		2		2			9
<b>Action 2...</b> Undertake studies in the field of ATM (06 02 03)	Reports															
- Output 1			0		0.25		0.25		0.25		0.25		0.25			1.250
<b>TOTAL COST</b>			0		1.25		2.25		2.25		2.25		2.25			10.250

<sup>21</sup> As described under Section 5.3

## 8.2. Administrative Expenditure

### 8.2.1. Number and type of human resources

Types of post		Staff to be assigned to management of the action using existing and/or additional resources ( <b>number of posts/FTEs</b> )					
		Year 2008	Year n+1	Year n+2	Year n+3	Year n+4	Year n+5
Officials or temporary staff <sup>22</sup> (XX 01 01)	A*/AD	1	2	2	2	2	2
	B*, C*/AST						
Staff financed <sup>23</sup> by art. XX 01 02							
Other staff <sup>24</sup> financed by art. XX 01 04/05							
<b>TOTAL</b>			1	2	2	2	2

### 8.2.2. Description of tasks deriving from the action

Performance regulation requires an intense process of evaluation of the performance of the ATM industry, setting performance targets at Community level, endorsement of these general targets, process of translating these network wide targets into local targets including consultation of airspace users, adoption of local targets by Commission.

In addition, Commission is to ensure efficiency of the network management function. This requires preparation of implementing rules and monitoring.

### 8.2.3. Sources of human resources (statutory)

- Posts currently allocated to the management of the programme to be replaced or extended
- Posts pre-allocated within the APS/PDB exercise for year n
- Posts to be requested in the next APS/PDB procedure
- Posts to be redeployed using existing resources within the managing service (internal redeployment)
- Posts required for year n although not foreseen in the APS/PDB exercise of the year in question

<sup>22</sup> Cost of which is NOT covered by the reference amount.

<sup>23</sup> Cost of which is NOT covered by the reference amount.

<sup>24</sup> Cost of which is included within the reference amount.

8.2.4. *Other Administrative expenditure included in reference amount (XX 01 04/05 – Expenditure on administrative management)*

EUR million (to 3 decimal places)

Budget line (number and heading)	Year n	Year n+1	Year n+2	Year n+3	Year n+4	Year n+5 and later	TOTAL
<b>1 Technical and administrative assistance (including related staff costs)</b>							
Executive agencies <sup>25</sup>							
Other technical and administrative assistance							
- <i>intra muros</i>							
- <i>extra muros</i>							
<b>Total Technical and administrative assistance</b>							

8.2.5. *Financial cost of human resources and associated costs not included in the reference amount*

EUR million (to 3 decimal places)

Type of human resources	Year 2008	Year n+1	Year n+2	Year n+3	Year n+4	Year n+5 and later
Officials and temporary staff (06 01 01)		0.117	0.234	0.234	0.234	0.234
Staff financed by Art XX 01 02 (auxiliary, END, contract staff, etc.) (specify budget line)						
<b>Total cost of Human Resources and associated costs (NOT in reference amount)</b>		0.117	0.234	0.234	0.234	0.234

Calculation– *Officials and Temporary agents*

<sup>25</sup> Reference should be made to the specific legislative financial statement for the Executive Agency(ies) concerned.

Calculation– *Staff financed under art. XX 01 02*

8.2.6. *Other administrative expenditure not included in reference amount*

EUR million (to 3 decimal places)

	Year n	Year n+1	Year n+2	Year n+3	Year n+4	Year n+5 and later	TOTAL
XX 01 02 11 01 – Missions							
XX 01 02 11 02 – Meetings & Conferences							
XX 01 02 11 03 – Committees <sup>26</sup>		0.058	0.058	0.058	0.058	0.058	0.290
XX 01 02 11 04 – Studies & consultations							
XX 01 02 11 05 - Information systems							
<b>2 Total Other Management Expenditure (XX 01 02 11)</b>							
<b>3 Other expenditure of an administrative nature</b> (specify including reference to budget line)							
<b>Total Administrative expenditure, other than human resources and associated costs (NOT included in reference amount)</b>		0.058	0.058	0.058	0.058	0.058	0.290

Calculation - *Other administrative expenditure not included in reference amount*

<sup>26</sup> Specify the type of committee and the group to which it belongs.