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#### NOTE

From:	General Secretariat of the Council
To:	Delegations
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Subject:	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the implementation of the Single European Sky (recast)

In view of the Aviation Working Party meetings on 22 and 23 October 2014, delegations will find attached a revised version of the consolidated text of the above-mentioned proposal.

Changes with regard to the previous version have been marked with **bold** and strikethrough.

All delegations have a scrutiny reservation on the new text. The UK has a parliamentary scrutiny reservation.

2013/0186 (COD)

Proposal for a

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

**on the implementation of the Single European Sky**

**(recast)**

(Text with EEA relevance)

**CHAPTER I  
GENERAL PROVISIONS**

**Subject matter and scope**

*Article 1*

1. This Regulation lays down rules for the creation and effective functioning of the Single European Sky in order to ensure 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 and air navigation services (ATM/ANS) for general air traffic in Europe, with a view to meeting the requirements of all airspace users. The Single European Sky shall comprise a coherent pan-European network of routes, a progressively more integrated airspace<sup>1</sup>, network management and air traffic management systems based on safety, efficiency and interoperability, for the benefit of all airspace users.

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<sup>1</sup> The Presidency proposes to explain the concept of integrated airspace in a recital as follows: "While ***in the European airspace in Europe the air traffic services are provided is controlled by more than one air-traffic-service provider, designated by one or more Member States to operate on an exclusive basis, each one retaining its own responsibility for its services, these services should be provided to the maximum extent possible on the basis of the same concept of operation, the same operational and support procedures.***" **HU** insists on the deletion of the reference to an integrated operating airspace and suggests to replace "requirements" with "needs".

2. The application of this Regulation 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 35. This Regulation does not cover military operations and training.<sup>2</sup>
3. The application of this Regulation 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, this Regulation seeks to assist, in the fields it covers, 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. This Regulation shall apply to the airspace within the ICAO EUR<sup>3</sup> region where Member States are responsible for the provision of air traffic services. Member States may also apply this Regulation to airspace under their responsibility within other ICAO regions, on condition that they inform the Commission and the other Member States thereof.
- [5. 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.]<sup>4 5</sup>

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<sup>2</sup> The Presidency proposes to examine military concerns at a later stage, as a horizontal issue.

<sup>3</sup> Commission opposes the deletion of the reference to the NAT region.

<sup>4</sup> UK cannot accept putting this paragraph between square brackets.

<sup>5</sup> ES proposes the addition of the following paragraph: "*The application of this Regulation to Gibraltar airport shall be suspended until the arrangements in the Joint Declaration made by the Foreign Ministers of the Kingdom of Spain and the United Kingdom on 2 December 1987 enter into operation. The Governments of Spain and the United Kingdom will inform the Council of such date of entry into operation.*"

## *Article 2*

### **Definitions<sup>6</sup>**

For the purpose of this Regulation, the following definitions shall apply:

1. 'air traffic control (ATC) service' means a service provided for the purpose of:
  - (a) preventing collisions:
    - between aircraft, and
    - in the manoeuvring area between aircraft and obstructions; and
  - (b) expediting and maintaining an orderly flow of air traffic;
2. 'aerodrome control service' means an ATC service for aerodrome traffic;
3. 'aeronautical information service' means a service established within the defined area of coverage responsible for the provision of aeronautical information and data necessary for the safety, regularity, and efficiency of air navigation;
4. 'air navigation services (ANS)' means air traffic services; communication, navigation and surveillance services; meteorological services for air navigation; and aeronautical information services;
5. 'air navigation service providers' means any public or private entity providing air navigation services for general air traffic;

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<sup>6</sup> Article 2 will be re-examined in its entirety at a later stage, once agreement on the substantive provisions has been found.

6. 'airspace block' means an airspace of defined dimensions, in space and time, within which air navigation services are provided;
7. 'airspace management' means a planning function<sup>7</sup> or service with the primary objective of maximising the utilisation of available airspace by dynamic time-sharing and, at times, the segregation of airspace among various categories of airspace users on the basis of short-term needs;
8. 'airspace users' means operators of aircraft operated as general air traffic;
9. 'air traffic flow management' means a function or service established with the objective of contributing to a safe, orderly and expeditious flow of air traffic by ensuring that ATC capacity is utilised to the maximum extent possible, and that the traffic volume is compatible with the capacities declared by the appropriate air traffic service providers;
10. 'air traffic management (ATM)' means the aggregation of the airborne and ground-based functions or services (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;
11. 'air traffic services' means the various flight information services, alerting services, air traffic advisory services and ATC services (area, approach and aerodrome control services);
12. 'area control service' means an ATC service for controlled flights in control areas;
- 12a. 'control area' means a controlled airspace extending upwards from a specified limit above the mean sea level;

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<sup>7</sup> CION advises to delete 'function', in line with the ICAO definition i.e. ATFM is a "service established with the objective of .."

13. 'approach control service' means an ATC service for arriving or departing controlled flights;
14. 'ATM Master Plan' means the plan endorsed by Council Decision 2009/320/EC<sup>8</sup>, 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)<sup>9</sup>;
15. 'network crisis' means a state of inability to provide ATM/ANS at required level resulting in a major loss of network capacity, or a major imbalance between network capacity and demand, or a major failure in the information flow in one or several parts of the network following an unusual and unforeseen situation;
16. 'bundle of services' means two or more air navigation services;
17. 'certificate' means a document issued by the European Agency for Aviation (EEA) or by a national supervisory authority in any form complying with applicable law, which confirms that an ATM/ANS service provider meets the requirements for providing a specific service;
18. 'communication services' means aeronautical fixed and mobile services to enable ground-to-ground, air-to-ground and air-to-air communications for ATC purposes;
- 18a. 'European air traffic management network' (EATMN) means the collection of systems listed in Annex V b of Regulation (EC) No 216/2008 of the European Parliament and of the Council of 20 February 2008 ... enabling air navigation services in the Union to be provided, including the interfaces at boundaries with third countries;

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<sup>8</sup> OJ L 95, 9.4.2009, p. 41.

<sup>9</sup> OJ L 64, 2.3.2007, p. 1., as amended by Council Regulations (EC) No 1361/2008 and No 219/2014 (OJ L 352, 31.12.2008 and OJ L 192, 1.7.2014).

19. 'constituents' means tangible objects such as hardware and intangible objects such as software upon which the interoperability of the European Air Traffic management Network (EATMN) depends;
20. 'declaration' means for purposes of ATM/ANS, any written statement:
- on the conformity or suitability for use of systems and constituents issued by an organisation engaged in the design, manufacture and maintenance of ATM/ANS systems and constituents, **as referred to in Article 8b(4) of Regulation (EC) 216/2008**; or
  - on the compliance with applicable requirements of a service or a system to be put into operation issued by a service provider, **as referred to in Article 8b(5) of Regulation (EC) 216/2008**; or
  - on the capability and means of discharging the responsibilities associated with certain flight information services, **as referred to in Article 8b(3) of Regulation (EC) 216/2008**;
- 20a. 'Eurocontrol' is the European Organisation for the Safety of Air Navigation set up by the International Convention of 13 December 1960 relating to Cooperation for the Safety of Air Navigation;
21. 'flexible use of airspace' means an airspace management concept based on the fundamental principle that airspace should not be designated as either pure civil or military airspace, but rather be considered as a continuum in which all user requirements have to be accommodated to the extent possible;
22. 'flight information service' means a service provided for the purpose of giving advice and information useful for the safe and efficient conduct of flights;

23. '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;
24. 'functional airspace block' means an airspace block based on operational requirements and established regardless of State boundaries, where the provision of ATM/ANS and related functions are performance-driven and optimised with a view to introducing, in each functional airspace block, enhanced cooperation among ATM/ANS providers or, where appropriate, an integrated provider;
25. 'general air traffic' means all movements of civil aircraft, as well as all movements of State aircraft (including military, customs and police aircraft) when these movements are carried out in conformity with the procedures of the International Civil Aviation Organisation (ICAO), as established by the 1944 Chicago Convention on International Civil Aviation;
26. 'interoperability' means a set of functional, technical and operational properties required of the systems and constituents of the EATMN and of the procedures for its operation, in order to enable its safe, seamless and efficient operation. Interoperability is achieved by making the systems and constituents compliant with the essential requirements;
27. 'meteorological services' means those facilities and services that provide aircraft with meteorological forecasts, warnings, briefings and observations as well as any other meteorological information and data provided by States for aeronautical use;
28. 'navigation services' means those facilities and services that provide aircraft with positioning and timing information;
29. 'operational data' means information concerning all phases of flight that are required to take operational decisions by air navigation service providers, airspace users, airport operators and other actors involved;



30. 'putting into service' means the first operational use after the initial installation or an upgrade of a system;
31. 'route network' means a network of specified routes for channelling the flow of general air traffic as necessary for the provision of ATC services;
32. 'surveillance services' means those facilities and services used to determine the respective positions of aircraft to allow safe separation;
33. 'system' means the aggregation of airborne and ground-based constituents, as well as space-based equipment, that provides support for air navigation services for all phases of flight;
34. 'upgrade' means any modification that changes the operational characteristics of a system;
35. '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. ;
36. 'national supervisory authority' means the national body or bodies entrusted by a Member State with the tasks of supervision in accordance with this Regulation and the national competent authorities entrusted with the tasks provided for in Article 8b of Regulation (EC) No 216/2008;
37. 'support services' means air navigation services other than air traffic services.
- 37a. 'performance plan' means the various plans established at national, functional airspace blocks or network level to improve the performance of ATM/ANS providers.
38. 'local performance targets' means performance targets adopted by the Member States at local level, namely at functional airspace block, national, charging zone or airport level.

## CHAPTER II NATIONAL AUTHORITIES

### Article 3

#### 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.
- 1a. **The national supervisory authorities shall exercise their powers impartially, independently and transparently. In particular, they shall be organised, staffed, managed and financed so as to allow them to exercise their powers in that manner.**  
*(moved from para. 5)*
2. The national supervisory authorities shall be ~~legally distinct and~~ independent in particular in organisational, hierarchical<sup>10</sup> and decision-making terms, from any air navigation service providers ~~or any private or public entity having an interest in the activities of such providers.~~
- 2a. **This independence shall be achieved through the nomination or establishment of a body or bodies which are legally distinct from the air navigation service providers.**

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<sup>10</sup> PCY proposes to explain the interpretation of this term in a recital.

- 2b. Notwithstanding paragraph 2a, this independence may also be achieved through a stand-alone<sup>11</sup> body(ies) meeting the requirements of paragraph 2. Where the NSA is not legally distinct from the ANSPs, the Member States concerned shall inform the Commission on the measures they have taken to ensure that they meet those requirements.
3. Without prejudice to paragraph 2, the national supervisory authorities may be joined in organisational terms with other regulatory bodies and/or safety authorities.
4. ~~The national supervisory authorities that are not legally distinct from any air navigation service providers or any private or public entity having an interest in the activities of such providers, as provided for in paragraph 2, on the date of entry into force of this Regulation shall meet this requirement by 1 January 2020 at the latest.~~
5. ~~The national supervisory authorities shall exercise their powers impartially, independently and transparently. In particular, they shall be organised, staffed, managed and financed so as to allow them to exercise their powers in that manner.~~
6. Staff of the national supervisory authorities shall:
- (a) be recruited under clear and transparent ~~rules~~ **processes** which guarantee their independence and as regards persons in charge of strategic decisions, be appointed by ~~the national cabinet or council of ministers or another public~~ an authority which does not directly control, or benefit from the air navigation service providers;

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<sup>11</sup> PCY proposes the following recital to explain the concept of separation for those NSAs which are not legally distinct from ANSPs: *"It is essential to ensure that NSAs are able to perform the tasks entrusted to them as stand-alone bodies, that is with complete independence and autonomy, in particular vis-à-vis the air navigation service providers, and to avoid any conflicts of interest. To that end, the NSAs and the staff under their control should carry out their work in a manner ensuring their autonomy and independence with regard to the air navigation service providers through an appropriate, tangible and effective division, in particular for those NSAs that are not legally distinct from the ANSPs."*

- (b) be selected ~~in a transparent procedure~~ on the basis of their specific qualifications, including appropriate competence and relevant experience ~~inter alia in the field of auditing, air navigation services and systems; or subject to an appropriate training;~~
- (c) act independently in particular from any **private or public** interest related to air navigation service **provision providers** and ~~shall not seek or take instructions from any government or other public or private entity when carrying out the functions of the national supervisory authority;~~
- (d) as regards persons in charge of strategic decisions, make an annual declaration of commitment and declaration of interests indicating any direct or indirect interests that may be considered prejudicial to their independence and which may influence the performance of their functions; and
- <sup>12</sup>(e) as regards persons in charge of strategic decisions, ~~or approval~~ **in particular based on** ~~of audits or other functions directly linked to oversight results or performance targets of~~ air navigation service providers, have no professional position or responsibility ~~within those any of the~~ air navigation service providers after their term in the national supervisory authority, for a period of at least one year.
7. 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. ~~The national supervisory authorities shall have full authority over the recruitment and management of their staff based on their own appropriations stemming from inter alia route charges to be set in proportion to the tasks to be fulfilled by the authority in accordance with Article 4.~~
8. 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 ~~this Article.~~

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<sup>12</sup> FR proposes to delete this para.

9. The Commission shall establish **guidelines on detailed rules laying down the modalities of the recruitment and selection procedures, for the application of and on specific qualifications, referred to in paragraphs 6(a) and (b). These implementing acts shall be adopted in accordance with the examination procedure referred to in Article 27(3).**

#### *Article 4*

##### **Tasks of the national supervisory authorities**

1. The national supervisory authorities referred to in Article 3 shall ~~be entrusted~~ in particular ~~with the following tasks~~:
  - (a) ~~ensuring~~ the 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;
  - (b) ~~granting~~ of certificates to air navigation services providers in accordance with Article 8b of Regulation (EC) No 216/2008 and overseeing the application of the conditions under which they have been granted;
  - (c) ~~issuing~~ licenses, ratings, endorsements and certificates for air traffic controllers in accordance with Article 8c of Regulation (EC) No 216/2008 and overseeing the application of the conditions under which they have been issued;
  - (d) ~~drawing up~~ performance plans and monitoring their implementation in accordance with Article 11;
  - (e) ~~monitoring~~ the implementation of the charging scheme in accordance with Articles 12 and 13;

(f) approving the conditions of access to operational data in accordance with Article 22, **as may be required**; and

(g) supervising declarations and the putting into service of systems.

2. Each national supervisory authority shall organise proper inspections and surveys to verify compliance with the requirements of this Regulation. The air navigation service provider concerned shall facilitate such work.

## *Article 5*

### **Co-operation between national supervisory authorities**

1. The national supervisory authorities shall exchange information about their work and decision-making principles, practices and procedures as well as implementation of Union law. ~~They shall cooperate for the purpose of coordinating their decision-making across the Union.~~ The national supervisory authorities ~~shall~~ **may** participate and work together in a network that convenes at regular intervals. The Commission and the European Union Agency for Aviation ( hereafter "EAA") shall be members, coordinate and support the work of the network and make recommendations to the network, as appropriate. The Commission and EAA shall facilitate active cooperation of the national supervisory authorities. **To this end the national supervisory authorities may, inter alia, and** exchanges and use ~~of their staff between the national supervisory authorities~~ based on a pool of experts to be set up by EAA in accordance with Article 17(2)(f) of Regulation (EC) No 216/2008.

Subject to the rules on data protection provided for in Article 22 of this Regulation and in Regulation (EC) No 45/2001, the Commission **and EASA** shall support the exchange of the information referred to in the first ~~and second~~ subparagraph of this paragraph among the members of the network, possibly through electronic tools, respecting the confidentiality of business secrets of air navigation service providers.

2. The national supervisory authorities shall cooperate ~~el~~osely, including through working arrangements, for the purposes of mutual assistance in their monitoring tasks and handling of investigations and surveys.
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. ~~The national supervisory authorities concerned shall~~ **may** establish a plan specifying the ~~modalities~~ **implementation** of their co-operation with a view to giving effect to that agreement.
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 this Regulation and with the applicable common requirements adopted in accordance with Article 8b(1) of Regulation (EC) No 216/2008.
5. In the case of provision of air navigation services ~~in an airspace falling under the responsibility of another Member State~~, the arrangements ~~referred to in paragraphs 2 and 4~~ shall include an agreement on the mutual recognition of the supervisory tasks set out in Article 4(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 6

### Qualified entities

1. National supervisory authorities may decide to delegate in full or in part the inspections and surveys referred to in Article 4 (2) to qualified entities that fulfil the requirements set out in Annex I. **In addition they may allocate to qualified entities a specific certification or oversight task in accordance with Article 13 of the EAA Regulation**
2. Such a delegation granted by a national supervisory authority shall be valid within the Union for a renewable period of three years. National supervisory authorities may instruct any of the qualified entities located in the Union to undertake these inspections and surveys.
3. Member States shall notify the Commission, EAA and the other Member States of the qualified entities to which they have delegated tasks in accordance with paragraph 1 indicating each entity's area of responsibility and its identification number and of any changes in this respect. The Commission shall publish in the *Official Journal of the European Union* the list of qualified entities, their identification numbers and areas of responsibility, and shall keep the list updated.
4. Member States shall withdraw the delegation of a qualified entity which no longer meets the requirements set out in Annex I. It shall forthwith inform the Commission, EAA and the other Member States thereof.
5. Bodies nominated before the entry into force of this Regulation as notified bodies in accordance with Article 8 of Regulation (EC) No 552/2004, shall be considered to be qualified entities for the purposes of this Article.



## Article 7

### Consultation of stakeholders

1. National supervisory authorities, acting in accordance with their national legislation, shall establish consultation mechanisms for appropriate involvement of stakeholders, including professional staff representative bodies for the exercise of their tasks, in the implementation of the Single European Sky.
2. The stakeholders may include:
  - air navigation service providers,
  - airport operators,
  - relevant airspace users or relevant groups representing airspace users,
  - military ATM/ANS providers authorities,
  - manufacturing industry,
  - professional staff representative bodies
  - national airport coordinators.

## CHAPTER III SERVICE PROVISION

### *Article 8*

#### **Certification of air navigation service providers**

1. The provision of all air navigation services within the Union shall be subject to certification by or declaration to, <sup>13</sup>national supervisory authorities or EAA in accordance with Article 8b of Regulation (EC) No 216/2008.
2. The certification process shall also ensure that the applicants can demonstrate sufficient financial strength and have obtained **appropriate** liability and insurance cover, where this is not guaranteed by the Member State concerned.
3. The certificate shall provide for non-discriminatory access to services for airspace users, with particular regard to safety. Certification shall be subject to the conditions set out in Annex II.
4. 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 Union. ~~With regard to support services this possibility shall be subject to the compliance with Article 10(2).~~

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<sup>13</sup> NL, supported by GR, would like to reinstate '*Member States*' instead of the NSAs.

5. <sup>14</sup>Notwithstanding paragraph 1, Member States may allow the provision of air navigation services in all or part of the airspace under their responsibility without certification in cases where the provider of such services offers them primarily to aircraft movements other than general air traffic. In those cases, the Member State concerned shall inform the Commission and the other Member States of its decision and of the measures taken to ensure maximum compliance with the common requirements.

## Article 9

### 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 or declaration in the Union.
2. For the provision of cross-border services, Member States shall ensure that compliance with this Article and Article 18(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 fulfil one of the following conditions :
  - (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
  - (c) use only facilities in that Member State.

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<sup>14</sup> The old recitals 15, 16 of Regulation 550/2004, recitals 6, 14, 16, 17 of Regulation 551/2004, as well as recitals 7 and 22 of Regulation 549/2004 will be reinstated.

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 is certified or declared in accordance with Regulation (EC) No 216/2008 .
5. In respect of functional airspace blocks established in accordance with Article 16 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. **Joint designations shall enable air traffic service providers to provide cross-border services within the functional airspace block.** *(moved from art. 16.6)*
6. Member States shall inform the Commission and other Member States immediately of any decision within the framework of this Article regarding the designation of air traffic service providers within specific airspace blocks in respect of the airspace under their responsibility.

## Article 9bis

### Designation of providers of meteorological services

1. Member States may designate a provider of meteorological services to supply all or part of meteorological data on an exclusive basis in all or part of the airspace under their responsibility, taking into account safety considerations.
2. Member States shall inform the Commission and other Member States without delay of any decision within the framework of this Article regarding the designation of a provider of meteorological services.

## Article 10

### Provision of support services

1. ~~Member States may decide to adopt a competitive approach to the provision of support services. after the publication of the guidance,~~ **Without prejudice to the possibility for air navigation service providers to operate a bundle of services,** Member States shall take all necessary measures to ensure that, ~~in accordance with this Article,~~ there are no statutory or regulatory impediments to the providers of support services that prevent their ability to offer services **compete** within the Union on an equitable, and non-discriminatory basis. **The requirement set out in this paragraph shall be met at the latest by 1 January 2020.**  
*(former para.2b)*

- 1a. **Notwithstanding paragraph 1**, Member States may decide to adopt<sup>15</sup> a competitive approach to the provision of support services, **in particular on the basis of a fair competitive tendering procedure and in accordance with the relevant principles of Union law. In that case, they may limit the right of access to national markets to those providers of support services established in Member States that have adopted a competitive approach to the provision of support services.** *(former para.1)*
2. By the end of 2017 the Commission shall conduct a study on the feasibility of the competitive provision of support services<sup>16</sup>, **in consultation of the interested stakeholders.** The study shall cover at least the feasibility and impact of competition on:
- a) The cost efficiency and quality of service provision;
  - b) The safety of service provision;
  - c) Member States' ability to meet their ICAO obligations; and
  - d) The social aspects.
- 2c. **The Commission shall present to the Council and the European Parliament a report on the justification, feasibility and the added value of the introduction of competitive provision of support services within the Union, accompanied, if necessary, by appropriate legislative proposals.**
- ~~2a. If the study demonstrates the added value of the competitive provision of support services, the Commission shall, after consultation of the interested stakeholders, develop guidance material concerning the modality of the competitive provision of support services. Those implementing acts shall be adopted by the examination procedure referred to in Article 27(3).~~

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<sup>15</sup> ES and LT propose to replace 'adopt' with 'apply'.

<sup>16</sup> *MT proposed to add: "to be used by those MS opting to offer supporting services on a competitive basis"*

~~2b. After the publication of the guidance, Member States shall take all necessary measures to ensure that, in accordance with this Article, there are no statutory or regulatory impediments to the providers of support services that prevent their ability to offer services within the Union on an equitable and non-discriminatory basis.~~

3. [...].<sup>17</sup>

4. A provider of support services may only be chosen to provide services in the airspace of a Member State, when:

(a) it is certified in accordance with Article 8b of Regulation (EC) No 216/2008, or its is authorised by that Member State to provide services to general air traffic according to Art. 1(2)(c) of Regulation 216/2008;

(b) its principal place of business is located in the territory of a Member State;

(c) Member States and/or nationals of Member States own more than 50 % of the service provider and<sup>18</sup> effectively control it, whether directly or indirectly through one or more intermediate undertakings, except as provided for in an agreement with a third country to which the Union is a party; and

(d) the service provider fulfils national security and defence requirements.

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<sup>17</sup> PCY proposes to replace this paragraph with a recital, recalling the applicability of Directive 2014/24/EU on public procurement, where appropriate.

<sup>18</sup> SE proposes to replace '*and*' with '*or*'.

5. <sup>19</sup>Support services related to the operations of the EATMN may be provided in a centralised manner by the Network Manager by adding those services to the services referred to in Article 17(2), in accordance with Article 17(3). They may also be provided on an exclusive basis by one or a limited number of air navigation service providers or groupings thereof, in particular those related to the provision of the ATM infrastructures. The Commission shall specify the modalities for the selection of providers or groupings thereof, based on the professional capacity and ability to provide services in an impartial and cost-effective manner, and establish an overall assessment of the estimated costs and benefits of the provision of the support services in a centralised manner. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 27(3).

## Article 11

### Performance scheme

1. To improve the performance of air navigation services and network functions and services in the Single European Sky, a performance scheme for air navigation services and network functions and services shall be set up. It shall ~~be based on~~ **include**:
  - (a) Union-wide performance targets on the key performance areas of safety, the environment, capacity and cost-efficiency;
  - (b) performance plans, including performance targets, ensuring adequate contribution to the Union-wide performance targets; and
  - (c) periodic review, monitoring and benchmarking of the performance of air navigation services and network functions and services.

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<sup>19</sup> HU, supported by ES, propose to delete this paragraph.



2. The Commission shall designate an independent, impartial and competent body to act as a 'performance review body', and select and appoint the chair and the members thereof.<sup>20</sup> 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 and the charging scheme referred to in Article 13. Technical assistance to the performance review body may be provided by EAA, Eurocontrol<sup>21</sup> or another competent entity.<sup>22</sup>
- 2a. The Commission shall establish the necessary competences, experience and independence requirements for membership of the performance review body, as well as for technical assistance to that body. It shall also establish the terms of reference and rules of procedure under which the performance review body shall conduct its activities in accordance with this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 27(3).
3. The Commission shall establish Union-wide performance targets for the air traffic management network. ~~In case that, during the reference period, the Commission finds that the initial data and assumptions, on the basis of which the Union-wide performance targets had been established, are no longer valid, the Commission may decide to revise those targets.~~ Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 27(3).

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<sup>20</sup> BG, supported by FR, proposes to add: *'This shall be done in accordance with the examination procedure referred to in Article 27(3).'*

<sup>21</sup> Many Member States require cancellation of any reference to ECTL, EASA or both –FI, ES.

<sup>22</sup> BG proposes to add the following text: *'The Commission shall ensure that the performance review body acts independently when carrying out the tasks entrusted to it by the Commission.'*

- 3a. Union-wide performance targets shall be defined on the basis of an analysis made by the performance review body taking into account the relevant<sup>23</sup> inputs from Member States and national supervisory authorities at national or functional airspace blocks level.
- 3aa. In case that, during the reference period, the Commission finds with adequate supporting evidence that the initial data and assumptions, on the basis of which the Union-wide performance targets had been established, are no longer valid, the Commission may decide to revise those targets in accordance with the examination procedure referred to in Article 27(3).**
- 3b. Prior to the establishment of Union-wide performance targets, the performance review body shall make available to the national supervisory authorities, the methodology and process for the evaluation of the performance plans. *(moved from para 4)*<sup>24</sup>.
- 3c. The ~~national or functional airspace block~~ **performance** plans referred to in paragraph 1 shall be drawn up by national supervisory authorities and adopted by the Member State(s). These plans shall include binding **local** performance targets and an appropriate incentive scheme as adopted by the Member State(s). **The performance review body shall assist the NSAs in the drafting of those plans.** The draft plans shall be subject to consultation with ~~the performance review body~~ air navigation service providers, airspace users' representatives, and, where relevant, professional staff representatives, military authorities, airport operators and airport coordinators.

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<sup>23</sup> NL proposes to delete '*relevant*'.

<sup>24</sup> The criteria and procedures provided by the Commission supersede the need for evidence required by several Member States.

- 3d. Where a national or functional airspace block plan is jointly supported by the representatives of air navigation service providers, airspace users and, where relevant, aerodrome operators and airport coordinators concerned, the Commission shall take into account the written confirmation of such support in its assessment of the performance plans.
4. The contribution of the **local** performance targets to the Union-wide performance targets shall be assessed by the Commission **in co-operation with the performance review body**.<sup>25</sup>
- 4a. In the event that the Commission identifies that **the national or functional airspace block performance plans or the local** targets do not **adequately contribute to the Union-wide targets**, it may **require** the Member States concerned to take the necessary corrective measures. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 27(3).
5. The reference period for the performance scheme, referred to in paragraph 1, shall cover a minimum of three years and a maximum of five years.
6. The Commission shall carry out regular assessments of the achievement of the **Union-wide and local** performance targets and inform the Committee thereof.

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<sup>25</sup> The criteria and procedures provided by the Commission supersede the need for evidence required by several Member States.

7. The performance scheme referred to in paragraph 1 shall be based on:
- (a) collection, validation, examination, evaluation and dissemination of relevant data related to the performance of air navigation services and network functions and services from all relevant parties, including ATM/ANS providers, airspace users, airport operators, national supervisory authorities, Member States, the Network Manager 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<sup>26</sup> 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 ~~and revision~~ of Union-wide ~~and local~~<sup>27</sup> performance targets that shall be defined taking into consideration inputs identified at national level or at the level of functional airspace blocks;
  - (d) criteria for the setting up by the national supervisory authorities of the performance plans. These criteria shall ensure that the performance plans:
    - (i) ~~are based on~~ **take into account** the business plans of the air navigation service providers and, if available, operational plans referred to in Article 16(10);
    - (ii) address all cost components of the national or functional airspace block cost base;

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<sup>26</sup> ES proposes to delete '*consistent with those identified in the Performance Framework of the ATM Masterplan*'.

<sup>27</sup> HU proposes to delete '*local*'

- (iii) include binding **local** performance targets adequately contributing to the Union-**wide** performance targets;
- (iv) include **appropriate** incentive schemes (*moved down from chapeau of subpara.*);
- (iv) consider the ~~impact of~~ **link between** security and defence requirements ~~on~~ **and** the use of airspace.
- (e) assessment<sup>28</sup> and, where appropriate, revision of the **local** performance targets, on the basis of the ~~national or functional airspace block~~ **performance plan**;
- (f) monitoring of the implementation of performance plans, including appropriate alert mechanisms;
- (g) criteria **to** assess whether local performance targets adequately contribute to the Union-wide performance targets during the reference period and to support alert mechanisms;
- (h) general principles for the setting up by Member States of the incentive scheme;
- (i) ~~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 act referred to in this paragraph**;
- (j) **appropriate** reference periods and intervals for the assessment of the achievement of performance targets and the setting of new targets;
- (k) the **necessary related** timetables;

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<sup>28</sup> ES proposes to add: '*by the PRB*'. PCY draws attention to para.4.

The Commission shall lay down detailed rules for the proper functioning of the performance scheme in accordance with the points listed in this paragraph. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 27(3).<sup>29</sup>

8. The establishment of the performance scheme shall take into account that en route services, terminal services and network functions and services are different and should be treated accordingly, if necessary also for performance-measuring purposes.
9. Within two years following the publication of this Regulation the Commission shall conduct a study on the impact of operations of stakeholders other than ATM/ANS providers on the efficient functioning of the European ATM network and publish its results. The study shall aim to identify any additional key performance area and/or indicator able to capture the effect of those operations for the next reference periods.

## Article 12

### **General provisions for the charging scheme**

In accordance with the requirements of Articles 13 and 14, 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. The 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.

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<sup>29</sup> Commission opposes the deletion of delegated acts.

## Article 13

### Principles for the charging scheme

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 principles set out in paragraphs 3 to 8 shall be applied when establishing the cost-base for charges.
3. 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, **including the costs incurred by EAA for relevant authority tasks<sup>30</sup>**.  
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(5), or during the reference period, following appropriate adjustments applying the alert mechanisms set out in Article 11.
4. 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 **shall<sup>31</sup>** 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 referred to Article 33 nor the costs of any corrective measures **or sanctions** referred to in Article 11 (**§ 4a**).

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<sup>30</sup> Commission will submit a non-paper justifying the cost-neutrality of this change.

<sup>31</sup> ES proposes to replace '*shall*' with '*may*'.

- 5 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.
- 6 The cost of different air navigation services shall be identified separately, as provided for in Article 21(3).
- 7 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 traffic<sup>32</sup> services in either one of those two categories only when justified for objective reasons, subject to clear identification. **Cross-subsidy shall not be allowed between air traffic<sup>33</sup> services and support services, if these are provided on a competitive basis in accordance with Article 10.**
- 8 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.
9. Member States shall comply with the following principles when setting charges in accordance with paragraphs 3 to 8:
- (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;

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<sup>32</sup> ES proposes to replace '*traffic*' with '*navigation*'.

<sup>33</sup> *ibidem*



- (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;
  - (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, including costs incurred by EAA for relevant authority tasks, 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. For the purposes of point (f) 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.
10. The Commission shall adopt measures setting out the details of the procedure to be followed for the application of paragraphs 1 to 9. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 27(3).

*Article 14<sup>34</sup>*

**Review of compliance with Articles 12 and 13**

1. The Commission shall provide for the ongoing review of compliance with the principles and rules referred to in Articles 12 and 13, 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 or on its own initiative, the Commission shall **carry out an investigation and** examine specific measures adopted by national authorities in relation to the application of Articles 12 and 13, concerning the determination of costs and charges. Without prejudice to Article 32(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, the Commission shall decide whether Articles 12 and 13 have been complied with and the measure may thus continue to be applied. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 27(2)<sup>35</sup>.

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<sup>34</sup> ES suggests to include new article 14a reflecting EP Am. 112-113-114.

<sup>35</sup> AT, BG, ES, PT prefer examination procedure.

### Common projects

1. The implementation of the ATM Master Plan may be supported by common projects. These projects shall support the objectives of this Regulation to improve the performance of the European aviation system **and ATM/ANS** in key areas such as capacity, flight and cost efficiency as well as environmental sustainability, within the overriding safety objectives. ~~The common projects shall aim to deploy in a timely, coordinated and synchronised manner ATM functionalities to achieve the essential operational changes identified in the ATM Master Plan~~
- 1a. **The Commission may set up common projects for<sup>37</sup> implementing those essential operational changes identified in the ATM Master Plan having a network-wide impact by identifying ATM functionalities that are mature for deployment, together with the timetable and geographical scope of the deployment and require to be deployed in a timely, coordinated and synchronised manner.**
2. The Commission may **also** adopt measures establishing the governance of common projects and identifying incentives for their deployment. ~~Those implementing acts shall be adopted, in accordance with the examination procedure referred to in Article 27(3).~~ These measures shall not prejudice mechanisms for the deployment of the projects concerning functional airspace blocks as agreed upon by the parties of those blocks.

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<sup>36</sup> ES suggests to amend par. 1, 2 and 3 in accordance with EP Am. 115-116-117.

<sup>37</sup> NL suggests to add 'ATM functions'

3. The Commission may adopt 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 identifying ATM functionalities that are mature for deployment, together with the timetable and geographical scope of the deployment. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 27(3). The common projects may be considered eligible for Union 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 28, 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.
- 3a. The implementing acts referred to in paragraphs 1a and 2 shall be adopted in accordance with the examination procedure referred to in Article 27(3).**

## Article 16

### Functional airspace blocks

1. Member States shall take all necessary measures in order to ensure the establishment and 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 a progressively more integrated<sup>38</sup> provision of ATM/ANS**, and maintaining a high level of safety and contributing to the overall performance of the air transport system and reduced environmental impact.
2. **The functional airspace blocks shall be set-up based on agreements between Member States, and wherever possible, supported by industrial partnerships as specified in Article 16a.**
3. Member States, National Supervisory Authorities, **as well as ATM/ANS providers** shall cooperate to the fullest extent possible with each other in order to ensure compliance with this Article. Where relevant, cooperation may also include National Supervisory Authorities **and ATM/ANS providers from** third countries taking part in functional airspace blocks.
4. Functional airspace blocks shall, in particular:
  - (a) be supported by a safety case;
  - (b) **be designed to contribute to the achievement of the performance targets set in accordance with Article 11;**

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<sup>38</sup> The following sentence could be added at the end of recital (25) to explain the progressive integration of ATM/ANS provision, including air space management. "The progressive integration of the provision of ATM/ANS may be achieved, **inter alia**, through an integrated service provider, **or through integrated work methodologies**, where appropriate".

(c) [...]

(d) [...]

(e) <sup>39</sup>be justified by their overall added value, including the most efficient use of technical and human resources<sup>40</sup> on the basis of cost-benefit analyses;

(f) where applicable, ensure a smooth and flexible transfer of responsibility for air traffic control between air traffic service units;

(g) [...]

(h) comply with conditions stemming from regional agreements concluded within the ICAO;

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

(4a) Functional airspace blocks shall also meet the following requirements in consistency **coordination** with the tasks carried out by the Network Manager as specified in Article 17<sup>41</sup>:

- enable the most flexible and the most efficient use of airspace that can be achieved, taking into account air traffic requirements of civilian and military airspace users<sup>42</sup>;

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<sup>39</sup> FR, supported by CZ, suggests to reword '*be justified*' into '*strive to achieve*'.

<sup>40</sup> A recital will be added to clarify the meaning of '*most efficient use of technical and human resources*' and its achievement in an ambitious but realistic manner.

<sup>41</sup> PSY considers that the link with Article 17 will ringfence the scope of the requirements and the method of compliance.

<sup>42</sup> Possible alternative wording: '*....the requirements of all airspace users*' - support by PL, CION.

- ensure consistency with the European route network established in accordance with Article 17;
- ensure compatibility between the different airspace configurations.

5. The requirements set out in this Article may be met through participation of Member States, National Supervisory Authorities and ATM/ANS providers in one or more functional airspace blocks.
6. ~~Joint designations shall enable air traffic service providers to provide cross-border services within the functional airspace block. (moved to Article 9(5))~~
7. Member States shall notify to the Commission the establishment and any modification of functional airspace blocks notably the agreements between Member States and the decisions on joint designations. 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.
- 7a. 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.
8. Where difficulties arise between two or more Member States with regard to a 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 6, the Member States shall take that opinion into account in order to find a solution.

9. After having received the notifications by Member States referred to in paragraphs ~~6~~ and 7 the Commission shall assess the fulfilment by each functional airspace block of the requirements set out in paragraphs 4 and 4a and present the results to the Member States 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.
10. The implementation of the functional airspace block may be based on an operational plan describing the actions to be taken by air navigation service providers, National Supervisory Authorities and other stakeholders concerned to meet the requirements of paragraph 4 and 4a. This operational plan shall be ~~submitted~~ notified to the Commission, if it has been produced. Before the establishment of the operational plan, the Member States taking part in functional airspace block shall ensure that the interested parties are provided with adequate information and have the opportunity to submit observations.
11. The Commission may adopt measures regarding the information to be provided by the Member State(s) referred to in paragraph 7 ~~and 10~~. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 27(3).
12. This Article shall be without prejudice to any agreement on functional airspace blocks between Member States existing on the date of entry into force of this Regulation.



## Article 16a

### Industrial partnerships

1. ATM/ANS providers shall strive to conclude industrial partnerships to support the implementation of the Single European Sky, and to improve the performance of the European ATM Network. Industrial partnerships may be concluded independently of, or within one or more functional airspace blocks or parts thereof.
2. Industrial partnerships are cooperative arrangements set up for the purpose of improving the performance in at least one of the key performance areas of the performance scheme referred to in Article 11. Industrial partnerships are set up by two or more partners giving their contribution to the provision of one or more air navigation services. Industrial partnerships may include, in addition to air navigation service providers, the Network Manager, airspace users, airport operators or other comparable economic actors.<sup>43</sup>
3. [...] <sup>44</sup>

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<sup>43</sup> ES proposes to delete the last sentence of this paragraph.

<sup>44</sup> PCY proposes to consider adding some wording in Art.11 on the recognition of the contribution of industrial partnership to the achievement of the EU-wide targets. FR is against.

## Article 17

### Network management and design

1. The air traffic management (ATM) network functions and services 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 and services 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.<sup>45</sup>
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 tasks are carried out by the Network Manager :
  - (a) design of the European route network and support for the optimisation of airspace design through co-operation with the air navigation service providers, Member State authorities and functional airspace blocks referred to in Article 16;
  - (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;
  - (c) central air traffic flow management service;
  - (d) provision of an aeronautical information portal in accordance with Article 23;

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<sup>45</sup> The Presidency suggests to include the following clarification in a recital: "*Network functions and services should aim at providing both performance benefits and cost savings to the EATMN, without overlapping, or duplicating the roles and responsibilities of ANSPs, the SESAR Joint Undertaking or the Deployment Manager.*"

(e) [...];

(f) central function for coordination of network crisis

**(g) any other task that is necessary to achieve the objectives referred to in paragraph 1.**

The tasks listed in this paragraph 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, after consultation of the ~~Single Sky~~ Committee and in conformity with the implementing rules referred to in paragraph 4, may appoint Eurocontrol, or another impartial and competent body, **to carry out the tasks of the Network Manager**. 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 and aerodrome operators.

3. With reference to the list set out in paragraph 2, the Commission may specify, ~~add and remove~~ tasks, in particular related to support services, where their execution by the Network Manager in a centralised manner is justified **in accordance with Article 10(5)**. **Those implementing acts shall be adopted by the examination procedure referred to in Article 27(3).**

4. The Commission shall adopt detailed rules concerning :
- (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 and services as defined in the ATM Master Plan;
  - (d) arrangements for cooperative decision-making between the Member States, the air navigation service providers and the Network Manager for the tasks referred to in paragraph 2;
  - (e) arrangements for the governance of the Network Manager to operate as an independent and cost-efficient service provider involving all operational stakeholders concerned, and, if appropriate, to be part of an industrial partnership, as referred to in article 16a(2);<sup>46</sup>
  - (f) arrangements for consultation of the relevant stakeholders in the decision-making process both at national and European levels; and

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<sup>46</sup> CZ and HU have a reservation.

- (g) within the radio spectrum allocated to general air traffic by the International Telecommunication Union, a division of tasks and responsibilities between the Network Manager 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 the Network Manager to optimise the use of frequencies.
- (h) within the support for the design of airspace, a division of tasks and responsibilities between the Network Manager, Member States and air traffic service providers; in particular:
- (i) the Network Manager shall work in co-operation with Member States and air traffic service providers at national or functional airspace block level to identify and evaluate inefficiencies in the design of airspace and incompatibilities between the different airspace configurations;
  - (ii) Member States and air traffic service providers, in consultation with the Network Manager, shall develop corrective measures to address these identified inefficiencies in order to meet the needs of all airspace users and aerodrome operators to the maximum extent possible;<sup>47</sup>
  - (iii) subject to the relevant decisions by the competent authorities at national or functional airspace blocks level, air traffic service providers shall implement those measures, either individually or jointly within functional airspace blocks, in coordination with the Network Manager.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 27(3).

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<sup>47</sup> FR suggests to add: *'in consistency with the priority level of other operational changes'*.

5. Aspects of airspace design other than those referred to in paragraphs 2, 4 (c) and 4(h) shall be dealt with at national level or at the level of functional airspace blocks. This design process shall take into account air traffic demands, seasonality and complexity, performance plans and shall include full consultation of relevant airspace users or relevant groups representing airspace users and military authorities as appropriate.

#### *Article 18*

### **Relations between service providers**

1. Air navigation service providers may avail themselves of the services of other service providers that have been certified or declared in the Union.
2. Air navigation service providers shall formalise their working relationships by means of written agreements or equivalent legal arrangements, setting out the specific duties and functions assumed by each provider and allowing for the exchange of operational data between all service providers in so far as general air traffic is concerned. Those arrangements shall be notified to the national supervisory authority concerned.
3. In cases involving the provision of air traffic services, the approval of the Member States concerned shall be required. In cases involving the provision of meteorological services, the approval of the Member States concerned shall be required if they have designated a provider on an exclusive basis in accordance with Article 9(1).

## Article 19

### Relations with stakeholders

The air navigation service providers shall establish consultation mechanisms to consult the relevant groups of airspace users and aerodrome operators on all major issues related to services provided<sup>48</sup>, relevant changes to airspace configurations, or strategic investments which have a relevant impact on ATM/ANS provision **and charges**.<sup>49</sup>

## Article 20

### 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.

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<sup>48</sup> ES suggests the reference to '*synchronization between air and ground equipment deployment*'

<sup>49</sup> Commission opposes the deletion of the implementing act proposed for this Article.

## *Article 21*

### **Transparency of accounts**

1. Air navigation service providers, whatever their system of ownership or legal form, shall draw up, submit to audit and publish their financial accounts. These accounts shall comply with the international accounting standards adopted by the Union. Where, owing to the legal status of the service provider, full compliance with the international accounting standards is not possible, the provider shall endeavour to achieve such compliance to the maximum possible extent.
2. In all cases, air navigation service providers shall publish an annual report and regularly undergo an independent audit.
3. When providing a bundle of services, air navigation service providers shall identify and disclose the costs and income deriving from air navigation services, broken down in accordance with the charging scheme for air navigation services referred to in Article 12 and, where appropriate, shall keep consolidated accounts for other, non-air-navigation services, as they would be required to do if the services in question were provided by separate undertakings.
4. Member States shall designate the competent authorities that shall have a right of access to the accounts of service providers that provide services within the airspace under their responsibility.
5. Member States may apply the transitional provisions of Article 9 of Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards<sup>50</sup> to air navigation service providers that fall within the scope of that regulation.

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<sup>50</sup> OJ L 243, 11.9.2002, p. 1.



## Article 22

### Access to and protection of data

1. In so far as general air traffic is concerned, relevant operational data shall be exchanged in real-time between all air navigation service providers, airspace users and airports, to facilitate their operational needs. The data shall be used only for operational purposes.
2. Access to relevant operational data shall be granted to appropriate authorities, certified or declared air navigation service providers, airspace users and airports on a non-discriminatory basis.
3. Certified or declared service providers, airspace users and airports shall establish standard conditions of access to their relevant operational data other than those referred to in paragraph 1. National supervisory authorities shall approve such standard conditions. The Commission may lay down measures concerning the procedures to be followed for data exchange and the type of data concerned in relation to these conditions of access and their approval. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 27(3).

## CHAPTER IV AIRSPACE

### *Article 23*

#### **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 the Network Manager, 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 ensure the development of a Union - 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.
3. The Commission shall adopt measures for the establishment and implementation of an electronic integrated briefing portal. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 27(3).

*Article 23a<sup>51</sup>*

**Flexible use of airspace**

- 1. Taking into account the organisation of military aspects under their responsibility, Member States shall ensure the uniform application within the single European sky of the concept of the flexible use of airspace as described by the ICAO and as developed by Eurocontrol, in order to facilitate airspace management and air traffic management in the context of the common transport policy.**
- 2. Member States shall report annually to the Commission on the application, in the context of the common transport policy, of the concept of the flexible use of airspace in respect of the airspace under their responsibility.**
- 3. Where, in particular following the reports submitted by Member States, it becomes necessary to reinforce and harmonise the application of the concept of the flexible use of airspace within the single European sky, the Commission shall adopt measures within the context of the common transport policy. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 27(3).**

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<sup>51</sup> Former Article 7 of Regulation 551/2004, aligned to the TFEU.

## Article 24

### **Technological development and interoperability of air traffic management**

1. The Commission shall adopt detailed rules concerning the promotion of the technological development and interoperability of air traffic management related to the development and deployment of the ATM Master Plan. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 27(3), **prior to the implementation of the ATM Master Plan.**
2. In respect of the rules referred to in paragraph 1, Article 17(2)(b) of Regulation (EC) No 216/2008 shall apply. Where appropriate, the Commission shall request EAA to include these rules in the annual work programme referred to in Article 56 of that Regulation.

## **CHAPTER V FINAL PROVISIONS**

### *Article 25*

#### **Adaptation of the Annexes**

The Commission shall be empowered to adopt delegated acts in accordance with Article 26 in order to supplement or amend the requirements for qualified entities listed in Annex I and the conditions to be attached to certificates to be awarded to air navigation service providers listed in Annex II in order to take account of experience gained by national supervisory authorities in applying these requirements and conditions or of the evolution of air traffic management system in terms of interoperability and integrated provision of air navigation services.

## Article 26

### Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The delegation of power referred to in ~~Article 11(7), Article 17(3) and~~ Article 25 shall be conferred on the Commission for ~~an indeterminate period of time~~ **a period of five years from [the date of the publication of this Regulation]. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.**
3. The delegation of power referred to in ~~Article 11(7), Article 17(3) and~~ Article 25 may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. **It is of particular importance that the Commission follow its usual practice and carry out consultations with experts, including Member States' experts, before adopting those delegated acts.** As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

5. A delegated act adopted pursuant to ~~Article 11(7), Article 17(3) and~~ Article 25 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of 2 months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by 2 months at the initiative of the European Parliament or the Council.

## *Article 27*

### **Committee procedure**

1. The Commission shall be assisted by the Single Sky Committee, hereinafter referred to as ‘the Committee’, **composed of two representatives of each Member State and chaired by the Commission. The Committee shall ensure an appropriate consideration of the interests of all categories of users.** The Committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.
3. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.
4. **Where the committee delivers no opinion, the Commission shall not adopt the draft implementing act and the third subparagraph of Article 5(4) of Regulation (EU) No 182/2011 shall apply.**

## *Article 28*

### **Consultation of stakeholders by the Commission**

1. The Commission shall establish a consultation mechanism at Union level to consult on matters related to the implementation of this Regulation where appropriate. The specific Sectoral Dialogue Committee set up under Commission Decision 98/500/EC shall be involved in the consultation.
2. The stakeholders may include:
  - air navigation service providers,
  - **Network Manager,**
  - airport operators,
  - relevant airspace users or relevant groups representing airspace users,
  - military authorities,
  - manufacturing industry, and,
  - professional staff representative bodies
  - **national airport coordinators.**
3. **The Commission shall make available to the Member States the result of the consultation.**

## *Article 29*

### **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 30

### Relations with third countries

The Union 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 joint designations of functional airspace blocks or agreements on network functions,~~ to **extend the application further the objectives** of this Regulation to those countries. **In addition, they shall endeavour to cooperate with those countries either in the context of functional airspace blocks, or of agreements on network functions, or in the framework of the Agreement between the European Union and the European Organisation for the Safety of Air Navigation providing a general framework for enhanced cooperation.**

## Article 31

### Support by outside bodies

The Commission may request support from an outside body for the fulfilment of its tasks under this Regulation, **including from Eurocontrol in the framework of the EU-Eurocontrol Agreement.**

## *Article 32*

### **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 12 shall be publicly disclosed.

## *Article 33*

### **Penalties**

Member States shall lay down rules on penalties applicable to infringements of this Regulation, in particular by airspace users and service providers, and shall take all measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive.

## *Article 34*

### **Review and methods of impact assessment**

1. The Commission shall periodically review the application of this Regulation shall report to the European Parliament and to the Council at the end of each reference period referred to in Article 11(5)(d). When justified for this purpose, the Commission may request from the Member States information relevant to the application of this Regulation.
2. 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 35*

### **Safeguards**

This Regulation shall not prevent the application of measures by a Member State to the extent that these are needed to safeguard essential security or defence policy interests. Such measures are in particular those which are imperative:

- (a) for the surveillance of airspace that is under its responsibility in accordance with ICAO Regional Air Navigation agreements, including the capability to detect, identify and evaluate all aircraft using such airspace, with a view to seeking to safeguard safety of flights and to take action to ensure security and defence needs,
- (b) in the event of serious internal disturbances affecting the maintenance of law and order,

- (c) in the event of war or serious international tension constituting a threat of war,
- (d) for the fulfilment of a Member State's international obligations in relation to the maintenance of peace and international security,
- (e) in order to conduct military operations and training, including the necessary possibilities for exercises.

#### *Article 36*

### **European Union Agency for Aviation (EAA)<sup>52</sup>**

When implementing this Regulation Member States and the Commission, in accordance with their respective roles as provided for by this Regulation, shall coordinate as appropriate with **EAA**.

#### *Article 37*

### **Repeal**

Regulations (EC) Nos 549/2004, 550/2004, 551/2004 and 552/2004 are repealed.

References to the repealed Regulations shall be construed as references to this Regulation and shall be read in accordance with the correlation table in Annex III.

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<sup>52</sup> The title of the Agency will be decided when there is agreement on the rest of the operative parts of the SES and EASA Regulations.

*Article 38*

**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*.

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

Done at Strasbourg,

*For the European Parliament*

*For the Council*

The President      The President

**REQUIREMENTS FOR QUALIFIED ENTITIES**

The qualified entities must:

- be able to document extensive experience in assessing public and private entities in the air transport sectors, in particular air navigation service providers, and in other similar sectors in one or more of the fields covered by this Regulation;
- have comprehensive rules and regulations for the periodic survey of the abovementioned entities, published and continually upgraded and improved through research and development programmes;
- not be controlled by air navigation service providers, by airport management authorities or by others engaged commercially in the provision of air navigation services or in air transport services,
- be established with significant technical, managerial, support and research staff commensurate with the tasks to be carried out,
- take out liability insurance unless its liability is assumed by the Member State in accordance with national law, or the Member State itself is directly responsible for the inspections.

The **qualified entity**, its Director and the staff responsible for carrying out the checks may not be involved, either directly or as authorised representatives, in the design, manufacture, marketing or maintenance of the constituents or systems or in their use. This does not exclude the possibility of an exchange of technical information between the manufacturer or constructor.

The qualified entity must carry out the checks with the greatest possible professional integrity and the greatest possible technical competence and must be free of any pressure and incentive, in particular of a financial type, which could affect its judgment or the results of its inspection, in particular from persons or groups of persons affected by the results of the checks.

4. The staff of the qualified entity must have:

- sound technical and vocational training,
- satisfactory knowledge of the requirements of the inspections they carry out and adequate experience of such operations,
- the ability required to draw up the declarations, records and reports to demonstrate that the inspections have been carried out.
- guaranteed impartiality. The staff's remuneration must not depend on the number of inspections carried out or on the results of such inspections.

CONDITIONS TO BE ATTACHED TO CERTIFICATES

1. Certificates shall specify:

- (a) the national supervisory authority issuing the certificate;
- (b) the applicant (name and address);
- (c) the services<sup>53</sup> which are certified;
- (d) a statement of the applicant's conformity with the common requirements, as defined in Article 8b of Regulation (EC) No 216/2008 ;
- (e) the date of issue and the period of validity of the certificate.

2. Additional conditions attached to certificates may, as appropriate, be related to:

- (a) non-discriminatory access to services for airspace users and the required level of performance of such services, including safety and interoperability levels;
- (b) the operational specifications for the particular services;
- (c) the time by which the services should be provided;
- (d) the various operating equipment to be used within the particular services;
- (e) ring-fencing or restriction of operations of services other than those related to the provision of air navigation services;
- (f) contracts, agreements or other arrangements between the service provider and a third party and which concern the service(s);

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<sup>53</sup> FR wants to add '*and where appropriate, functions*'.



(g) provision of information reasonably required for the verification of compliance of the services with the common requirements, including plans, financial and operational data, and major changes in the type and/or scope of air navigation services provided;

(h) any other legal conditions which are not specific to air navigation services, such as conditions relating to the suspension or revocation of the certificate.

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**CORRELATION TABLE**

Regulation 549/2004	Regulation 550/2004	Regulation 551/2004	Regulation 552/2004	This Regulation
Article 1(1) to (3)				Article 1(1) to (3)
		Article 1(3)		Article 1(4)
Article 1(4)				Article 1(5)
	Article 1			-----
		Article 1(1), (2) and (4)		-----
			Article 1	-----
Article 2 Nos (1) to (35)				Article 2 Nos (1) to (35)
				Article 2 Nos (36) to (38)
Article 2 Nos 17, 18, 23, 24, 32, 35, 36				-----
Article 3				-----
Article 4(1) and (2)				Article 3(1) and (2)

				Article 3(3) and (4)
Article 4(3)				Article 3(5)
				Article 3(6)
Article 3(4) to (5)				Article 3(7) and (8)
				Article 3(9)
	Article 2(1)			Article 4(1a)
				Article 4(1b) to (1g)
	Article 2(2)			Article 4(2)
				Article 5(1) and (2)
	Article 2(3) to (6)			Article 5(3) to (6)
	Article 3(1) and (2)			Article 6(1) and (2)
			Article 8(1) and (3)	Article 6(3) and (4)
				Article 6(5)

			Article 8(2) and (4)	-----
	Article 6			-----
Article 10(1)				Article 7(1)
				Article 7(2)
	Article 7(1)			Article 8(1)
				Article 8(2)
	Article 7(4) and (6)			Article 8(3) and (4)
	Article 7(2), (3), (5), (7) to (9)			-----
	Article 8			Article 9
				Article 10
	Article 9			-----
Article 11				Article 11
	Article 14			Article 12
	Article 15			Article 13
	Article 16			Article 14

	Article 15a			Article 15
	Article 9a(1)			Article 16(1) and (3)
				Article 16(2)
	Article 9a(2) point (i)			-----
	Article 9a(2)			Article 16(4)
				Article 16(5)
	Article 9a(3) to (9)			Article 16(6) to (12)
	Article 9b			-----
		Article 6(1) to (2b)		Article 17(1) and (2b)
				Article 17(2c) to (2e)
		Article 6(3) – (4d)		Article 17(3) to (4d)
				Article 17(4e)
		Article 6(4e) to (4f)		Article 17(4f) and (4g)

		Article 6(5) and (7)		Article 17(5) and (6)
		Article 6(8) and (9)		-----
	Article 10			Article 18
				Article 19
	Article 11			Article 20
	Article 12			Article 21
	Article 13			Article 22
		Article 3		-----
		Article 3a		Article 23
		Article 4		-----
		Article 7		-----
		Article 8		-----
				Article 24(1) and (2)
			Article 3(3)	-----
			Article 2 to 3(2)	-----
			Article 3(4) to 7	-----
	Article 17(1)			Article 25

				Article 26
Article 5(1) to (3)				Article 27(1) to (3)
Article 5(4) and (5)				-----
Article 10(2) and (3)				Article 28(1) and (2)
Article 6				Article 29
Article 7				Article 30
Article 8				Article 31
	Article 4			-----
			Article 9	-----
	Article 18			Article 32
Article 9				Article 33
Article 12(2) to (4)				Article 34(1) to (3)
Article 12(1)				-----
	Article 18a			-----
		Article 10		-----
Article 13				Article 35
Article 13a				Article 36

			Article 10	-----
			Article 11	Article 37
	Article 19(1)			Article 38
	Article 19(2)			-----
	Annex I		Annex V	Annex I
			Annex I	-----
	Annex II			Annex II
			Annex II	-----
				Annex III
			Annex III	-----
			Annex IV	-----

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