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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)

Delegations will find attached the signed Opinion of the above act.

GROUPE CONSULTATIF
DES SERVICES JURIDIQUES

Brussels, 23. 10. 2013

OPINION

FOR THE ATTENTION OF **THE EUROPEAN PARLIAMENT**
THE COUNCIL
THE COMMISSION

Proposal for a Regulation of the European Parliament and of the Council on the implementation of the Single European Sky
COM(2013) 410 final of 11.6.2013 - 2013/0186 (COD)

Having regard to the Inter-institutional Agreement of 28 November 2001 on a more structured use of the recasting technique for legal acts, and in particular to point 9 thereof, the Consultative Working Party consisting of the respective legal services of the European Parliament, the Council and the Commission met on 4 July 2013 for the purpose of examining, among others, the aforementioned proposal submitted by the Commission.

At that meeting[1], an examination of the proposal for a Regulation of the European Parliament and of the Council recasting Regulation (EC) No 549/2004 of 10 March 2004 laying down the framework for the creation of the single European sky, Regulation (EC) No 550/2004 of 10 March 2004 on the provision of air navigation services in the single European sky, Regulation (EC) No 551/2004 of 10 March 2004 on the organisation and use of the airspace in the single European sky and Regulation (EC) No 552/2004 of 10 March 2004 on the interoperability of the European air traffic management network resulted in the Consultative Working Party's establishing, by common accord, as follows.

1) As far as the explanatory memorandum is concerned, in order to be drafted in full compliance with the relevant requirements laid down by the Inter-institutional Agreement such a document should have specified which provisions of the earlier act remain unchanged in the proposal, as is provided for under point 6(a)(iii) of that agreement.

[1] The Consultative Working Party had at its disposal the English, French and German language versions of the proposal and worked on the basis of the English version, being the master-copy language version of the text under discussion.

2) In the recast proposal, the following parts of text should have been marked with the grey-shaded type generally used for identifying substantive changes:
- in recital 19, the replacement of the word "*Eurocontrol*" with the expression "*the Network Manager*";
- in Article 1(2) and (3), in the introductory wording of Article 2, in Article 3(1), in Article 33 and in Article 34(1), the deletion of the words "*and of the measures referred to in Article 3*";
- in Article 11(2), the deletion of the initial words "*In accordance with the regulatory procedure referred to in Article 5(3)*".
- in Article 14(2), the final sentence "*Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 27(2)*";
- in Article 16(11), the final sentence "*Those implementing acts shall be adopted in accordance with the procedure referred to in Article 27(3)*";
- in the title of Article 30, the deletion of the word "*European*".

3) In Article 1(2) of the recast proposal, the reference made to Article 38 should be adapted so as to read as a reference made to Article 35.

In consequence, examination of the proposal has enabled the Consultative Working Party to conclude, without dissent, that the proposal does not comprise any substantive amendments other than those identified as such therein or in the present opinion. The Working Party also concluded, as regards the codification of the unchanged provisions of the earlier act with those substantive amendments, that the proposal contains a straightforward codification of the existing legal text, without any change in its substance.

However, as far as Article 16(11) of the draft recast act is concerned, it was discussed whether or not that text should have been entirely identified with the grey-shaded type generally used for marking substantive changes.

On the one hand, the Legal Services of the European Parliament and of the Commission considered that the presentation used in that text for identifying the replacement of a wording currently contained in Article 9a(9) of Regulation (EC) No 550/2004 with a new wording, taken from standard wordings agreed between the three institutions, sufficiently describes the substantive amendment proposed for that existing provision.

On the other hand, the Legal Service of the Council considered that the change in procedure cannot be separated from the substantive issue to which that procedure relates and that therefore the entire text of the said provision should have been identified by using the grey-shaded type.

Nevertheless, the three legal services shared the view that the draft text submitted by the Commission for that new provision should be understood as meaning that the Commission had intended to propose only that the reference to the regulatory procedure currently contained in Article 9a(9) of Regulation (EC) No 550/2004 be replaced with a conferral of implementing powers on the Commission in accordance with Article 291 TFEU and Regulation (EU) No 182/2011.

Moreover, it was also the common understanding of the three legal services that, as part of the recast exercise, the legislator should evaluate, in accordance with the Treaties, whether that proposed alignment of the existing comitology provision with the new system of implementing acts can be considered acceptable or whether a different solution should be envisaged, such as delegating powers to the Commission in accordance with Article 290 TFEU or conferring implementing powers on the Council in accordance with Article 291 TFEU or none of those, so leaving the relevant measures for the legislative procedure.

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