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Subject: Amended proposal for a Regulation of the European Parliament and of the Council on the implementation of the Single European Sky (recast)
– General approach (3 June 2021)

Delegations will find in appendix I the Council's general approach on the above-mentioned proposal and its annexes, adopted by the Council at its 3798th meeting on 3 June 2021.

2013/0186 (COD)

Amended 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)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union , and in particular Article 100(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee¹,

Having regard to the opinion of the Committee of the Regions²,

Acting in accordance with the ordinary legislative procedure,

Whereas:

¹ OJ C [...], [...], p. [...].

² OJ C [...], [...], p. [...].

- (1) Regulation (EC) No 549/2004 of the European Parliament and of the Council³, Regulation (EC) No 550/2004 of the European Parliament and of the Council⁴ and Regulation (EC) No 551/2004 of the European Parliament and of the Council⁵ have been substantially amended. Since further amendments are to be made, those Regulations should be recast in the interests of clarity.

³ Regulation (EC) No 549/2004 of the European Parliament and of the Council of 10 March 2004 laying down the framework for the creation of the single European sky (the framework Regulation) (OJ L 96, 31.3.2004, p. 1).

⁴ Regulation (EC) No 550/2004 of the European Parliament and of the Council of 10 March 2004 on the provision of air navigation services in the single European sky (the service provision Regulation) (OJ L 96, 31.3.2004, p. 10).

⁵ Regulation (EC) No 551/2004 of the European Parliament and of the Council of 10 March 2004 on the organisation and use of the airspace in the single European sky (the airspace Regulation) (OJ L 96, 31.3.2004, p. 20).

- (2) The adoption by the European Parliament and the Council of the first package of the single European sky legislation, namely, Regulation (EC) No 549/2004 , Regulation (EC) No 550/2004 , Regulation (EC) No 551/2004 , and Regulation (EC) No 552/2004 of the European Parliament and of the Council⁶ , laid down a firm legal basis for a seamless, interoperable and safe air traffic management (ATM) system. The adoption of the second package, namely, Regulation (EC) No 1070/2009 of the European Parliament and of the Council⁷, further strengthened the Single European Sky initiative by introducing the performance scheme and the Network Manager concepts to further improve the performance of the European ATM network. Regulation (EC) No 552/2004 has been repealed by Regulation (EU) 2018/1139 of the European Parliament and of the Council⁸, as the rules necessary for interoperability of ATM systems, constituents and procedures have been incorporated in that Regulation.
- (3) In order to take into account the changes introduced in Regulation (EU) 2018/1139, it is necessary to align the content of this Regulation with that of Regulation (EU) 2018/1139 and, in parallel, to amend that latter Regulation.
- (4) In Article 1 of the 1944 Chicago Convention on Civil Aviation, the Contracting States recognise that ‘every State has complete and exclusive sovereignty over the airspace above its territory’. It is within the framework of such sovereignty that the Member States of the Union, subject to applicable international conventions, exercise the powers of a public authority when controlling air traffic.

⁶ Regulation (EC) No 552/2004 of the European Parliament and of the Council of 10 March 2004 on the interoperability of the European air traffic management network (the interoperability Regulation) (OJ L 96, 31.3.2004, p. 26).

⁷ Regulation (EC) No 1070/2009 of the European Parliament and of the Council of 21 October 2009 amending Regulations (EC) No 549/2004, (EC) No 550/2004, (EC) No 551/2004 and (EC) No 552/2004 in order to improve the performance and sustainability of the European aviation system (OJ L 300, 14.11.2009, p. 34).

⁸ Regulation (EU) 2018/1139 of the European Parliament and of the Council of 4 July 2018 on common rules in the field of civil aviation and establishing a European Union Aviation Safety Agency, and amending Regulations (EC) No 2111/2005, (EC) No 1008/2008, (EU) No 996/2010, (EU) No 376/2014 and Directives 2014/30/EU and 2014/53/EU of the European Parliament and of the Council, and repealing Regulations (EC) No 552/2004 and (EC) No 216/2008 of the European Parliament and of the Council and Council Regulation (EEC) No 3922/91 (OJ L 212, 22.8.2018, p. 1).

- (4a) This Regulation should not affect Member States rights and responsibilities under the Chicago Convention.
- (5) Implementation of the common transport policy requires an efficient air transport system allowing the safe, regular and sustainable operation of air transport services, optimising use of airspace and capacity, contributing to aviation sustainability and facilitating the free movement of goods, persons and services.
- (6) The simultaneous pursuit of the goals of augmentation of air traffic safety standards and improvement of the overall performance of ATM and air navigation services (ANS) for general air traffic in Europe requires that the human factor be taken into account. Therefore, the Member States should uphold ‘just culture’ principles. The opinions and recommendations of the Expert Group on the Human Dimension⁹ of the Single European Sky should be considered and taken into account.
- (7) Improvements in the environmental performance of ATM also contribute to the achievement of the objectives contained in the Paris Agreement, in the Communication from the Commission on the European Green Deal, Council conclusions on the Commission's Sustainable and Smart Mobility Strategy and in the Digital Agenda for Europe in particular through the reduction of aviation emissions.
- (7a) Airspace is a common resource for all categories of users that needs to be used flexibly by all of them, ensuring fairness and transparency whilst taking into account security and defence needs of Member States and their commitments within international organisations.
- (8) In 2004, the Member States have adopted a general statement on military issues related to the Single European Sky¹⁰, which they have reiterated. According to that statement, Member States should, in particular, enhance civil-military cooperation and, if and to the extent deemed necessary by all Member States concerned, facilitate cooperation between their armed forces in all matters of air traffic management.

⁹ C(2017) 7518 final

¹⁰ See OJ L 96, 31.03.2004, p. 9.

- (9) Decisions relating to the content, scope or carrying out of military operations and training do not fall within the sphere of competence of the Union under Article 100(2) of the Treaty on the Functioning of the European Union.
- (9a) Member States, together with third countries where relevant, may establish functional airspace blocks to develop better cooperation and coordination with a view to fostering performance of the air traffic management network within the Single European Sky and a reduced environmental impact.
- (10) Member States should nominate a national supervisory authority in order to assume the tasks assigned to such authority under this Regulation. To ensure the consistent and sound oversight of service provision across Europe, the national supervisory authorities should be guaranteed sufficient independence and resources. In particular, the financing of those authorities should guarantee their independence and should allow them to operate in accordance with the principles of fairness, transparency, non-discrimination and proportionality. Staff of national supervisory authorities should act independently, in particular by avoiding conflicts of interest between air navigation service provision and the execution of their tasks. This should not prevent a national supervisory authority from being part of a regulatory authority competent for several regulated sectors if that regulatory authority fulfils the independence requirements, or from being joined in terms of its organisation in particular with the national competent authority designated pursuant to Regulation (EU) 2018/1139 or the national competition authority.
- (11)
- (12) National supervisory authorities have a key role to play in the implementation of the Single European Sky and they should therefore cooperate with each other in order to enable the exchange of information on their work and decision-making principles, best practices and procedures as well as with regard to the application of this Regulation and to develop a common approach, including through enhanced cooperation at regional level. This cooperation should take place on a regular basis.
- (13)

- (14) An air navigation service provider should be able to offer services in the Union under non-discriminatory conditions where it holds a certificate or a declaration pursuant to Article 41 of Regulation (EU) 2018/1139.
- (14a) Pursuant to Article 2, paragraph 3, c), of Regulation (EU) 2018/1139, that Regulation, including the certification requirements laid down in its Article 41, does not apply to ATM/ANS that are provided or made available by the military. Accordingly, Member States should also be authorised to allow the provision of such air navigation services in all or part of the airspace under their responsibility without certification and/or application of all or part of this Regulation. In such cases, the Member State concerned may in particular be able to designate the military service providers concerned to provide air traffic services or meteorological services (MET) in accordance with this Regulation.
- (14b) This Regulation does not require the certification of signals provided by Global Navigation Satellite Systems (GNSS).
- (15) There should be no discrimination between airspace users as to the provision of equivalent air navigation services.
- (16) Air traffic services should be provided on an exclusive basis. Providers of such services should be subject to designation and public interest requirements with respect in particular to national security and defence as well as the location of their principal place of business and their ownership. In this respect, it should be taken into account that the provision of air traffic services, as envisaged by this Regulation, is connected with the exercise of the powers of a public authority, which are not of an economic nature and therefore not subject to the application of the Treaty rules on competition.
- (16a) Member States should ensure that the designation of an air traffic service provider is not prevented by their national law on the grounds in particular that the service provider concerned has its principal place of business in another Member State or is owned by nationals of that Member State in case the application of such national law entails an unjustified restriction of the freedom to provide services or the freedom of establishment, which should be assessed on a case-by-case basis in the light of all relevant circumstances.

- (16b) On the basis of their analysis of safety considerations, Member States should be able to designate on an exclusive basis one or more MET providers in respect of all or part of the airspace under their responsibility, without the need to organise a call for tenders.
- (16c) The cooperation between air navigation service providers is an important tool for improving the overall performance of the European ATM system and should be encouraged.
- (17) On the basis of their analysis of safety considerations, Member States may allow air traffic service providers or, airport operators or a group of airport operators to procure communication, navigation and surveillance services (CNS), aeronautical information services (AIS), air traffic data services (ADS), MET , unless a single MET provider is designated by the Member State concerned, or terminal air traffic services for aerodrome and approach control . The possibility to resort to such procurement may allow for more flexibility and to promote innovation in services, without affecting safety and the specific needs, including of the military, regarding confidentiality, interoperability, system resilience, data access, and ATM security.
- (18) Where MET or air traffic services for aerodrome control and approach control are procured, they should not be subject to the performance scheme set out in this Regulation.
- (19)
- (20) Where applicable, the procurement of air navigation services should be carried out in accordance with Directive 2014/24/EU of the European Parliament and of the Council¹¹ Directive 2014/25/EU of the European Parliament and of the Council¹² unless otherwise provided under this Regulation, and with the principles of equal treatment, non-discrimination and transparency as well as with the applicable provisions of the Treaty, in particular the Treaty rules on the freedom to provideservices and the freedom of establishment.

¹¹ Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ L 94, 28.3.2014, p. 65).

¹² Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC (OJ L 94, 28.3.2014, p. 243).

- (21) The traffic management of unmanned aircraft requires the availability of common information services CIS. In order to contain the costs of such traffic management, prices for CIS provided on an exclusive basis should be based on cost and a reasonable mark-up for profit, and should be subject to approval by national supervisory authorities. To enable the provision of the service, access to relevant operational data should be granted to CIS providers on fair, reasonable and non-discriminatory terms.
- (21a) Availability of relevant operational data with respect to general air traffic is essential for enabling the flexible provision of air traffic data services, on cross-border and on Union-wide bases. Therefore, such data should be made available to relevant stakeholders on fair, reasonable, and non-discriminatory terms. Accuracy of information including on airspace status and on specific air traffic situations and timely distribution of this information to civil and military controllers has a direct impact on the safety and efficiency of operations, including the environmental efficiency of flights. Timely access to up-to-date information on airspace status is essential for all parties wishing to take advantage of airspace structures made available when filing or re-filing their flight plans .
- (22) The performance and charging schemes should ensure the efficient, sustainable and continuous operation of the European ATM system and are also intended to make air navigation services provided under conditions other than market conditions more cost-efficient and to promote better service quality . To this end, they should include relevant and appropriate incentives. In view of this objective, the performance scheme should not cover services procured in accordance with this Regulation. The performance scheme should cover all air navigation services which a designated air traffic service provider provides or procures from other service providers, including when that service provider provides air navigation services and air traffic services.
- (22a) A Performance Review Body (PRB) may be designated to advise and assist the Commission as well as the national supervisory authorities in the implementation of the performance and charging schemes.
- (23)
- (24)

- (25) Given the cross border and network elements inherent in the provision of air navigation services *en-route* performance should be assessed against Union-wide performance targets.
- (25a) Given their knowledge of the local circumstances, Member States and their national supervisory authorities should be in charge of preparing and adopting the draft performance plans and performance targets. Those plans should be based in particular on the input of the designated air traffic service provider(s) in respect of all the air navigation services which those service providers provide or procure. The Commission should be in charge of assessing those plans. The national supervisory authorities should also be in charge of monitoring performance by air traffic service providers and of imposing corrective measures, where appropriate.
- (26) Draft performance plans should contain *en route* performance targets consistent with Union-wide performance targets as well as terminal performance targets in the key performance areas of the environment, capacity and cost-efficiency, while taking into account local circumstances and interdependencies between key performance areas and safety, and conform to certain qualitative criteria, so as to ensure as much as possible that the targets set are effectively met.
- (27) The performance of the network should be subject to specific criteria, having regard to the peculiar nature of the network functions. The network should be subject to performance targets in the key performance areas of the environment, capacity and cost-efficiency.
- (28) The charging scheme should be based on the principle that airspace users should pay for the cost incurred for the provision of the services made available to them or for their benefit which are not covered otherwise . The costs incurred in relation to the provision of air navigation services by Member States national authorities, including the national competent authorities and the national supervisory authorities as well as EUROCONTROL and the Network Manager may be included in the determined costs eligible to be charged to airspace users. Charges should 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 should support the reduction of the environmental impact of aviation.

- (29) Member States should be allowed to provide for the modulation of charges to improve environmental performance and service quality, notably through increased use of sustainable alternative fuels, increased capacity and reduced delays, while maintaining an optimum safety level. The Commission should carry out a feasibility study on the impact of the modulation of charges on air traffic and on stakeholders, as well as on the contribution of that modulation to achievement of the Single European Sky objectives.
- (30)
- (30a) Mechanisms such as the extension, the suspension of an on-going reference period or the adaptation of performance targets over a reference period, should be established to address unforeseeable and significant events having a material impact on the implementation of the performance and charging schemes, where a significant deviation from traffic forecasts can be observed.
- (30b) Without prejudice to the procedure laid down in Article 258 TFEU, the Commission should review the compliance by the Member States with the requirements set out under the performance and charging schemes and, where appropriate, may issue an opinion on whether those requirements have been complied with.
- (31) Provision should be made for the transparency of the accounts of air navigation service providers, as one means to prevent cross-subsidisation and ensuing distortions.
- (32) Network functions should contribute to the sustainable development of the air transport system and support the achievement of Union-wide performance targets. They should facilitate the sustainable, efficient and environmentally optimal use of airspace and of scarce resources, reflect operational needs in the deployment of the European ATM network infrastructure and should provide support in case of network crises.

(32a) A number of of network functions, such as air traffic flow management, need to be coordinated centrally by a single body in support of actions taken by Member States and the relevant operational stakeholders. Therefore, a number of tasks contributing to the execution of these functions should be carried out by a Network Manager, whose action should involve all operational stakeholders concerned. The specific tasks of the Network Manager should be laid down in this Regulation. The Network Manager should be appointed by the Commission. The Commission should appoint Eurocontrol, given the extensive expertise of that organisation in the aviation domain, or another impartial and competent body, to carry out those tasks.

(33) Operational stakeholders, which have to implement network functions at local and operational levels, as well as Member States should be fully involved in the implementation of those functions and in the decision-making process. Accordingly, the Network Manager should take measures through cooperative decision-making based in particular on the consultation of operational stakeholders and Member States and detailed working arrangements and processes for operation. In such cooperative decision-making process, the interest of the network should prevail to the extent possible, without prejudice to security and defence needs, and be such so that issues are resolved and consensus found wherever possible. Moreover, to ensure the appropriate governance relating to the execution of the network functions, a Network Management Board, ensuring an appropriate representation of the interests of all the actors involved in the implementation of those functions, should be set up. Without prejudice to the consultation of the Network Management Board on regulatory or strategic decisions such as the endorsement of the Network Strategy Plan, the measures adopted through cooperative decision-making and by the Network Management Board should be operational or technical in nature, ensuring the day to day operation of the network in accordance with the objectives of this regulation. Decision-making powers of the Network Manager and the Network Management Board as well as the scope of the cooperative decision-making process should be clearly defined. Acts adopted in the framework of network functions should be subject to judicial review as appropriate in accordance with the conditions laid down in the Treaty.

(34)

- (35)
- (36) The provision of complete, high-quality and timely aeronautical information has a significant impact on safety and on facilitating access to Union airspace and the possibilities of moving within it. Access to those data should be facilitated through an appropriate information infrastructure.
- (37) The safe and efficient use of airspace can only be achieved through close cooperation between civil and military airspace users, which in practice is mainly based on the concept of flexible use of airspace and effective civil-military coordination as established by ICAO. With a view to ensuring the uniform application of this concept, the Commission should be empowered to adopt implementing acts, within the limits of the common transport policy and without prejudice to Member States' responsibilities over their airspace.
- (38) The SESAR project is aimed at enabling the safe, efficient and environmentally sustainable development of air transport by modernising the European and global ATM system. In order to contribute to its full effectiveness, proper coordination between the phases of the project should be ensured. The European ATM Master Plan should result from the SESAR definition phase, and should contribute to achieving the Union-wide performance targets.
- (39) The concept of common projects should aim at implementing, in a timely, coordinated and synchronised manner, the essential operational changes identified in the European ATM Master Plan which have a network-wide impact. The Commission should be charged with carrying out a cost-benefit analysis in respect of the funding with a view to speeding up the deployment of the SESAR project.
- (40) Compliance with the requirements for ATM systems and constituents established by Regulation (EU) 2018/1139 should ensure the interoperability of those systems and constituents, to the benefit of the Single European Sky.
- (41)

- (42) In order to ensure uniform conditions for the implementation of this Regulation, in particular with regard to the designation of the PRB, the implementation of the performance and charging schemes, including on the setting of Union-wide performance targets, the criteria and procedures for the assessment of the draft performance plans and performance targets of air traffic service providers and the Network Manager, the assessment and approval of the performance plans, the monitoring of performance, rules for the provision of information on costs and charges, the content and establishment of the cost base for charges and the setting of unit rates for air navigation services, incentive mechanisms and risk-sharing mechanisms, rules on the execution of the network functions, on the appointment of the Network Manager and the terms and conditions of such appointment, as well as the tasks of the Network Manager, on the Network Management Board, on cooperative decision-making process and the network governance mechanisms, requirements regarding the availability of operational data, application of the concept of flexible use of airspace, the establishment of common projects and the governance mechanisms applicable to them, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council¹³. Where the committee delivers no opinion, the Commission should not adopt the draft implementing act.
- (43) The social and professional staff organisations should respectively be consulted on all proposed measures having significant social, technological and human dimension or performance related implications. At Union level, the Sectoral Dialogue Committee set up under Commission Decision 98/500/EC¹⁴ and the Expert Group for Human Dimensions should also be consulted.
- (44) The penalties provided for with respect to infringements of this Regulation should be effective, proportional and dissuasive, without reducing safety.

¹³ Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

¹⁴ OJ L 225, 12.8.1998, p. 27.

(44b) This Regulation should not prevent the application by Member States of measures necessary to safeguard essential security or defence policy interests. Moreover, it does not affect the power of Member States to adopt provisions in relation to the organisation of their armed forces. This power may lead Member States to adopt measures to ensure that their armed forces have sufficient airspace for adequate education and training purposes. Provision should therefore be made for a safeguards clause to enable this power to be exercised.

(45)

(46) Since the objective of this Regulation, namely the implementation of the Single European Sky, cannot be sufficiently achieved by the Member States but can rather, by reason of the transnational scale of the action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective,

HAVE ADOPTED THIS REGULATION:

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject matter and scope

1. This Regulation lays down rules for the creation and effective functioning of the Single European Sky in order to reinforce 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 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 , a progressively more integrated airspace, network management and air traffic management systems based on safety, efficiency, interoperability and technological modernisation, for the benefit of all airspace users, citizens and the environment.
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 44. This Regulation does not cover military operations and training. The coordination with military authorities shall be ensured to identify and address potential impacts of the application of this Regulation on military activities.
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 aims 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 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 the condition that they inform the Commission and the other Member States thereof.

Article 2

Definitions

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

1. ‘aerodrome control service’ means an air traffic control (ATC) service for aerodrome traffic;
2. ‘aeronautical information service’ means a service, established within a defined area of coverage, responsible for the provision of aeronautical information and data necessary for the safety, regularity, and efficiency of air navigation;
- 2a. ‘Agency’ means the European Union Aviation Safety Agency established by Regulation (EU) 2018/1139;
3. ‘air navigation service provider’ means a public or private entity providing one or more air navigation services for general air traffic;
4. ‘air navigation services (ANS) ’ means air traffic services; communication, navigation and surveillance services (CNS) including services which augment signals emitted by satellites of core constellations of GNSS for the purpose of air navigation; meteorological services for air navigation (MET); aeronautical information services (AIS); and air traffic data services (ADS);
5. ‘air traffic control (ATC) service’ means a service provided for the purpose of:
 - (a) preventing collisions:
 - (i) between aircraft;

(ii) in the manoeuvring area between aircraft and obstructions;

(b) expediting and maintaining an orderly flow of air traffic;

6. 'air traffic data services' means services consisting in the collection, aggregation and integration of operational data from providers of surveillance services, from providers of MET and AIS and network functions and from other relevant entities generating operational data, and the provision of processed data for air traffic control and air traffic management purposes;

8. 'air traffic flow management (ATFM)' means a function established with the objective of contributing to a safe, orderly and expeditious flow of air traffic covering the full trajectory 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;

9. 'air traffic management (ATM)' means the aggregation of the airborne and ground-based functions and services (air traffic services, airspace management and air traffic flow management, including flight procedures design;) required to ensure the safe and efficient movement of aircraft during all phases of operations;

10. 'air traffic services' means the various flight information services, alerting services, air traffic advisory services and ATC services (area, approach and aerodrome control services);

11. 'airspace block' means an airspace of defined dimensions, in space and time, consisting of one or more airspace structures, within which air navigation services are provided;

12. 'airspace management' means a planning and monitoring function with the primary objective of optimising 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;

13. 'airspace structure' means a specific volume of airspace defined with a view to ensuring the safe and optimal operation of air traffic management;

14. 'airspace users' means operators of aircraft operated in accordance with general air traffic rules;
15. '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;
16. 'approach control service' means an ATC service for arriving or departing controlled flights;
17. 'area control service' means an ATC service for controlled flights in control areas ;
18. 'baseline value' means a value defined for the purpose of setting performance targets and estimated by using actual costs or actual unit costs during the year preceding the start of the relevant reference period;
19. 'benchmark group' means a group of air traffic service providers with a similar operational and economic environment;
20. 'breakdown value' means the value obtained, for a given air traffic service provider, by breaking down a Union-wide performance target to the level of one or more air traffic service providers and serving as a reference for assessing consistency of the performance target set in draft performance plan with the Union-wide performance target;
21. 'certificate' means a certificate as defined by Article 3(12) of Regulation (EU) 2018/1139;
22. 'common information service (CIS)' means a service consisting in the dissemination of static and dynamic data to enable the provision of U-space services for the management of traffic of unmanned aircraft;
23. 'communication services' means aeronautical fixed and mobile services to enable ground-to-ground, air-to-ground and air-to-air communications for ATC purposes;
24. '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;

25. ‘control area’ means a controlled airspace extending upwards from a specified limit above the earth;

26. ‘cooperative decision-making’ means a process in which decisions, are made based on interaction and consultation with the relevant Member State authorities, operational stakeholders and other actors as appropriate and aiming at consensus;

27. ‘cross-border services’ means air navigation services provided in one Member State by a service provider having its principal place of business in another Member State ;

28. ‘declaration’ means, for the purposes of air traffic management and air navigation services, a declaration as defined in Article 3(10) of Regulation (EU) 2018/1139;

30. ‘*en route* charging zone’ means a volume of airspace that extends from the ground up to, and including, upper airspace, where *en route* air navigation services are provided and for which a single cost base and a single unit rate are established;

31. ‘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;

32. ‘European air traffic management network’ (EATMN) means the collection of systems, referred to in point 3.1 of Annex VIII to Regulation (EU) 2018/1139 , enabling air navigation services in the Union to be provided, including the interfaces at boundaries with third countries;

33. ‘European ATM Master Plan’ means the plan endorsed by Council Decision 2009/320/EC¹⁵, and as subsequently amended;

34. ‘flexible use of airspace’ means an airspace management concept, as described by ICAO, 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;

¹⁵ OJ L 95, 9.4.2009, p. 41.

35. 'flight information service' means a service provided for the purpose of giving advice and information useful for the safe and efficient conduct of flights;

35b. 'functional airspace block' means an airspace block based on operational requirements and established regardless of State boundaries, where the provision of air navigation services and related functions are performance-driven and optimised with a view to introducing, in each functional airspace block, enhanced cooperation among air navigation service providers or, where appropriate, an integrated provider;

35c. 'flight procedures design' means all tasks relevant to the design of an instrument flight procedure;

36. 'general air traffic' means all movements of civil aircraft, as well as all movements of State aircraft (including military, customs and police aircraft) when those movements are carried out in conformity with the procedures of the International Civil Aviation Organisation (ICAO) as established by the Chicago Convention ;

37. '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;

38. 'meteorological services for air navigation (MET)' means the facilities and services that provide meteorological forecasts, warnings, briefings and observations for air navigation purposes, as well as any other meteorological information and data provided by States for aeronautical use;

39. 'national competent authority' means the entities as defined in point (34) of Article 3 of Regulation (EU) 2018/1139;

40. 'national supervisory authority' means the national body or bodies entrusted by a Member State with the tasks under this Regulation ;

41. 'navigation services' means the facilities and services that provide aircraft with positioning and timing information;

42. 'network crisis' means a state of inability to provide air traffic management and or air navigation services 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 or integrity in one or several parts of the network following an unusual or unforeseen situation;

43. 'Network Manager' means the entity entrusted with the tasks necessary to contribute to the execution of the network functions referred to in Article 26, in accordance with Article 27;

43a. 'Network Operations Plan (NOP)' means a plan established through cooperative decision-making process to implement at operational level the objectives of the network functions, and to contribute to performance objectives;

43b. 'Network Strategy Plan (NSP)' means a plan established through cooperative decision-making process guiding the network's long-term development;

43c. 'Operational air traffic' means all flights, which do not comply with the provisions stated for general air traffic and for which rules and procedures have been specified by appropriate national authorities;

44. 'operational data' means information concerning all phases of flight that is required for operational purposes by air navigation service providers, airspace users, airport operators and other actors involved;

44a. 'operational stakeholders' means the civil and military airspace users, civil and military air navigation service providers as well as airport operators;

45. 'performance plan' means a plan aimed at improving the performance of air navigation services and network functions;

46. 'putting into service' means the first operational use after the initial installation or upgrade of a system;

47. 'route network' means a network of specified routes for channelling the flow of general air traffic as necessary for the provision of ATC services;

48. ‘SESAR definition phase’ means the phase comprising the establishment and updating of the long-term vision of the SESAR project, of the related concept of operations enabling improvements at every stage of flight, of the required essential operational changes within the EATMN and of the required development and deployment priorities;

49. ‘SESAR deployment phase’ means the successive phases of industrialisation and implementation, during which the following activities are conducted: standardisation, production and certification of ground and airborne equipment and processes necessary to implement SESAR solutions (industrialisation); and procurement, installation and putting into service of equipment and systems based on SESAR solutions, including associated operational procedures (implementation);

50. ‘SESAR development phase’ means the phase during which research, development and validation activities aiming to deliver mature SESAR solutions are conducted;

51. ‘SESAR project’ means the project to modernise air traffic management in Europe, aimed at providing the Union with a high performance, standardised and interoperable air traffic management infrastructure, and consisting in an innovation cycle that includes the SESAR definition phase, the SESAR development phase and the SESAR deployment phase;

52. ‘SESAR solution’ means a deployable output of the SESAR development phase introducing new or improved standardised and interoperable operational procedures or technologies;

53. ‘surveillance services’ means the facilities and services used to determine the respective positions of aircraft to allow safe separation;

54. ‘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;

56. ‘terminal charging zone’ means an airport or a group of airports, located within the territories of a Member State or Member States, where terminal air navigation services are provided and for which a single cost base and a single unit rate are established;

57. 'upgrade' means any modification that changes the operational characteristics of a system.

Article 2a

Functional airspace blocks

1. Member States may establish a functional airspace block to develop better cooperation and coordination with a view to fostering the performance of the air traffic management network within the Single European Sky. Without prejudice to Article 5(3) to (5a) of this Regulation, Member States may jointly execute all or part of their obligations under Articles 3, 4, 5, 7, 7a, 7b, 8, 10, 13, 13a, 13b and 17 of this Regulation and of the implementing rules adopted on the basis thereof at the level of the functional airspace block.
2. Where relevant, cooperation may also include third countries taking part in functional airspace blocks.
4. Functional airspace blocks shall be established by means of an international agreement concluded between the Member States concerned and, where relevant, the third countries concerned having responsibility for any part of the airspace covered by the functional airspace block. The agreement and the list of obligations that Member States intend to implement jointly shall be notified to the Commission.

CHAPTER II

NATIONAL SUPERVISORY AUTHORITIES

Article 3

Nomination, establishment and requirements regarding 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 by this Regulation.
2. The national supervisory authority shall exercise its powers impartially, independently and transparently and shall be organised, staffed, managed and financed accordingly.
3. The national supervisory authority shall be independent from any air navigation service providers, in organisational, hierarchical and decision-making terms, in particular by avoiding conflicts of interest with those service providers. That independence shall not prevent that authority and those service providers from being part of the same civil service, public entity or administration.

4. Member States may set up authorities which are competent either for several regulated sectors or for several areas of regulation within the transport sector provided that those integrated regulatory authorities fulfil the independence requirements set out in this Article. The national supervisory authority may be joined in respect of its organisational structure with other public authorities, in particular the national competition authority referred to in Article 11 of Council Regulation (EC) No 1/2003¹⁶, the national competent authority, or, if applicable, with a national transport authority, provided that the joint body hereby set up fulfils the independence requirements set out in this Article.

9. 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.

Article 4

Tasks of the national supervisory authorities

1. The national supervisory authority shall carry out the tasks assigned to it under this Regulation and the implementing acts adopted on the basis thereof, in particular the following tasks:

- (a) verify the compliance with, and the fulfilment of national security and defence requirements by the service providers referred to in Article 7(1a)b) and Article 8(4)d);
- (c) assess and approve the price setting for the provision of the CIS, in accordance with Article 9;
- (d) preparation of the draft performance plan, including the setting of criteria for allocation of costs and the setting of performance targets, the monitoring of performance and the charging schemes as set out, and within the limits of, in Articles 10 to 13b, 17 and 19 to 22 and the implementing acts referred to in Articles 18 and 23;

¹⁶ Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ L 1, 4.1.2003, p. 1).

- (e) oversee the application of the Regulation regarding the transparency of accounts in accordance with Article 25 , audit or verify and approve the financial data referred to in Article 25(4).

3. Each national supervisory authority shall, in cooperation with the national competent authority where it is a different entity, conduct the necessary monitoring activities, including, as appropriate, inspections and audits, to identify possible non-compliance by entities subject to their oversight under this Regulation of the requirements set out in this Regulation and the implementing acts adopted on the basis thereof . In case of non-compliance, national supervisory authorities shall decide on and enforce corrective measures.

The air navigation service providers, airport operators and the CIS providers concerned shall comply with any enforcement measures taken by the national supervisory authorities in that context. In case of cross-border services, the Member State concerned, or its national supervisory authority, may request the Member State where the service provider is established or has its principal place of business, or the national supervisory authority of that Member State, to provide him with support to overcome any enforcement difficulties. Both Member States, or their national supervisory authorities, shall endeavour to cooperate to that end.

Article 5

Co-operation between national supervisory authorities

1. The national supervisory authorities shall exchange information as appropriate, in particular information relating to their work and decision-making process, best practices and procedures, as well as to the application of this Regulation. To this end, the national supervisory authorities may participate and work together in a network that convenes at regular intervals.

2. The national supervisory authorities shall cooperate, in particular in the case of the provision of cross-border services and of provision of air navigation services in an airspace falling under the responsibility of another Member State, through working arrangements, for the purposes of mutual assistance in their monitoring and supervisory tasks and handling of investigations and surveys.

3. In the case of provision of air navigation services in an airspace falling under the responsibility of two or more Member States, in particular with respect to functional airspace blocks, the Member States concerned shall conclude, if appropriate, an agreement on the supervision to be carried out by them or their authorities under this Regulation, of the air navigation service providers concerned.

4. In the case of provision of air navigation services in an airspace falling under the responsibility of another Member State, the agreements referred to in paragraph 3 shall provide for the mutual recognition of the discharge, by each of the Member States or their authorities, of the tasks set out in this Regulation and of the results of the discharge of these tasks. They shall also specify which national supervisory authority shall be in charge of the tasks set out in Article 4(1).

5. Where permitted by national law and with a view to regional cooperation, national supervisory authorities may also conclude agreements on the division of responsibilities regarding the supervisory tasks.

5a. Agreements referred to in this Article shall be notified to the Commission.

CHAPTER III

SERVICE PROVISION

Article 6

Provision of services by air navigation service providers

2. Without prejudice to Articles 7, 7a and 8(4) of this Regulation, an entity that complies with the requirements set out in Articles 40 and 41 of Regulation (EU) No 2018/1139 and in the delegated acts and implementing acts adopted on the basis thereof shall be entitled to provide air navigation services for airspace users within the Union, under non-discriminatory conditions.

2a. In the case a Member States has granted to an air navigation service provider an exemption from the requirement to hold a certificate pursuant to Article 41(6) of Regulation (EU) 2018/1139, that Member State may, notwithstanding paragraph 2, allow that service provider to provide air navigation services in the part of the airspace under its responsibility for which this exemption was granted and in compliance with the conditions set out in that Article.

3. Notwithstanding paragraph 2, Member States may allow the provision of air navigation services referred to in Article 2(3)c) of Regulation 2018/1139 in all or part of the airspace under their responsibility by the military without certification and/or application of all or part of this Regulation. In such cases, the Member State concerned shall inform the Commission and the other Member States of its decision. The provision of those services shall be in accordance with the conditions laid down in Article 2(5) of Regulation 2018/1139.

Article 7

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 individually or collectively, designate one or more air traffic service provider(s). Member States shall have discretionary powers in designating air traffic service provider(s), on the condition that the air traffic service provider(s) fulfils the requirements laid down in this Article.

1a. The air traffic service providers shall fulfil the following cumulative conditions:

- (a) they hold a certificate pursuant to Article 41 of Regulation (EU) 2018/1139 or a valid declaration pursuant to Article 41(5) of Regulation (EU) 2018/1139, unless exempted from the certification requirement pursuant to Article 2(3)c) of Regulation (EU) 2018/1139;
- (b) they comply with the national security and defence requirements;
- (c) their principal place of business is located in the territory of a Member State and
- (d) Member States or nationals of Member States own more than 50% of the service provider and effectively control it, whether directly or indirectly through one or more intermediate undertakings, except where otherwise as provided for in an agreement with a third country to which the Union is a party.

By way of derogation from points c) and d), a Member State may designate an air traffic service provider having its principal place of business in a third country and/or not complying with the condition set out in point d) to provide air traffic services in a limited part of the airspace for which that Member State is responsible where that part of the airspace borders an airspace under the responsibility of that third country.

2. The designation of the air traffic service providers shall not be subject to any condition requiring those providers to :

(a) be owned directly or through a majority holding by the designating Member State or its nationals;

(b) have their principal place of operation or registered office in the territory of the designating Member State;

(c) use only facilities in the designating Member State in case the application of such conditions entails an unjustified restriction of the freedom to provide services or the freedom of establishment.

3. Member States shall specify the rights and obligations to be met by the air traffic service providers, designated in accordance with this Article.

4. 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 7a

Designation of MET providers

1. Member States may designate, individually or collectively, a MET provider 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 taken on the basis of this Article.

Article 7b

Relations between air navigation service providers

1. Air navigation service providers may avail themselves of the services of other service providers that hold a certificate pursuant to Article 41 of Regulation (EU) 2018/1139 or a valid declaration pursuant to Article 41(5) of Regulation (EU) 2018/1139, unless exempted from the certification requirement pursuant to Article 2(3)c) of Regulation (EU) 2018/1139. Such cooperation shall be made in accordance with Article 8 where applicable.

For air traffic service providers designated in accordance with Article 7 and MET providers designated in accordance with Article 7a, such cooperation shall be subject to the authorisation of the Member States concerned.

2. For the purpose of paragraph 1, air navigation service providers shall formalise their working relationships by means of written agreements or equivalent legal arrangements, setting out the specific duties, including financial settlements if applicable, and functions assumed by each provider. Those agreements or arrangements shall be notified to the national supervisory authority or authorities concerned.

For air traffic service providers designated in accordance with Article 7 and MET providers designated in accordance with Article 7a, the terms of that agreement shall be subject to the approval of the Member States concerned.

Article 8

Conditions regarding the provision of CNS, AIS, ADS, MET and the provision of air traffic services for approach and aerodrome control

1. Without prejudice to the rights and obligations defined by their designating State under Article 7(3), designated air traffic service providers may decide to procure CNS, AIS, or ADS services .

1a. Except in cases where Member States have designated a MET provider in accordance with Article 7a, Member States may allow air traffic service providers to procure MET.

1b. Member States may allow airport operators or a group of airport operators to procure air traffic services for aerodrome control and/or air traffic services for approach control .

In such case, the tender specifications, including requirements on service quality, shall be subject to Member States approval. Member States shall designate the service provider selected as a result of the procurement referred to in this paragraph.

4. A provider of CNS, AIS, ADS, MET or air traffic services for aerodrome control or for approach control may only be selected and, if appropriate, designated to provide services in a Member State as a result of a procurement pursuant to paragraphs 1, 1a or 1b, on the condition that it complies with the following cumulative conditions:

- (a) holds a certificate pursuant to Article 41 of Regulation (EU) 2018/1139 or a valid declaration pursuant to Article 41(5) of Regulation (EU) 2018/1139, unless exempted from the certification requirement pursuant to Article 2(3)c) of Regulation (EU) 2018/1139;
- (b) its principal place of business is located in the territory of a Member State;
- (c) Member States or nationals of Member States own more than 50% of the service provider and 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 complies with national security and defence requirements.

By way of derogation from points b) and c), any provider of global satellite services that was granted a certificate pursuant to Article 41 of Regulation (EU) 2018/1139 to provide services within the Union prior to the adoption of this Regulation may be selected to provide such services in the Union even if it does not comply with the conditions set out in points b) and c).

5. Articles 13, 13a, 13b and 17 and the implementing rules relating to those Articles adopted on the basis of Article 18 shall not apply to the MET services provided by MET providers selected or to the air traffic service providers designated as a result of a procurement procedure conducted in accordance with paragraphs 1a and 1b. The air traffic service providers concerned shall provide relevant data on the performance of air navigation services in the key performance areas referred to in Article 10(2)a) and in safety area to the national supervisory authority and the Commission for monitoring purposes.

Article 9

Provision of common information services

1. Where CIS are provided, the data disseminated shall present the integrity and quality necessary to enable the safe and secure provision of services for the management of traffic of unmanned aircraft.
2. The CIS provider shall fulfil the following cumulative requirements:
 - (a) they comply with the national security and defence requirements;
 - (b) their principal place of business is located in the territory of a Member State and
 - (c) Member States or nationals of Member States own more than 50% of the service provider and effectively control it, whether directly or indirectly through one or more intermediate undertakings, except where otherwise provided for in an agreement with a third country to which the Union is a party.
3. The costs on the basis of which the price for CIS is based shall be set out in an account separate from the accounts for any other activities of the operator concerned and shall be accessible by the national supervisory authority concerned..

Where CIS are provided on an exclusive basis, Member States shall impose that the price for CIS is based on the fixed and variable costs of providing the service concerned and/or includes a mark-up reflecting an appropriate risk-return trade-off.

4. The price set by the CIS provider shall be subject to assessment and approval by the national supervisory authority concerned. The price of such services shall be made publicly available.
5. Data necessary for the safe operation of unmanned aircraft in the U-Space airspace shall be made available , on a non-discriminatory basis, without prejudice to national security, public order and defence policy interests, by air navigation service providers. CIS providers shall use those data only for operational purposes of the services they provide.

Prices for access to such data shall be based on the additional costs of making the data available and the cost for generating the data, where the latter costs are not covered under Article 20 and unless other financial resources are used by Member States to cover such costs.

Article 9a

Availability of and access to operational data for general air traffic

1. With regard to general air traffic, relevant operational data shall be made available in real-time, on a non-discriminatory basis and without prejudice to national security, public order and defence policy interests, by all air navigation service providers, airspace users, airports and the Network Manager, including on a cross-border and a Union-wide basis. Such availability shall be to the benefit of certified or declared air navigation service providers, military entities in charge of security and defence activities, military air navigation service providers, airspace users and airports as well as the Network Manager. The data shall be used only for operational purposes.
3. Access to relevant operational data as referred to in paragraph 1 shall be granted free of charge to the authorities in charge of security, public order, and defence, to national supervisory authorities, to national competent authorities, to the Network Manager, and to the Agency in accordance with Regulation (EU) 2018/1139.
4. The Commission shall, in accordance with the examination procedure referred to in Article 37(3), determine the specific operational data covered by this Article and define the technicalities of such data provision.

Article 9b

Performance review body

1. In accordance with the examination procedure referred to in Article 37(3), the Commission may, by means of an implementing act, designate an independent and impartial Performance Review Body (PRB). The PRB shall have no regulatory function or other decision-making power. The role of the PRB shall be limited to providing advice and assistance to the Commission and the national supervisory authorities on request in particular as regard the collection, examination, validation and dissemination of relevant data as well as the implementation of the performance scheme set out in Articles 10 to 18 and of the charging scheme set out in Articles 19 to 23. The Commission and the national supervisory authorities shall remain responsible for the implementation of their tasks and obligations under this Regulation. The Commission shall supervise the proper execution of the PRB tasks.

2. In case the Commission decides to designate a PRB pursuant to paragraph 1, it shall, in accordance with the examination procedure referred to in Article 37(3), adopt detailed rules regarding in particular the period of designation of the PRB, the composition of the PRB, the selection and appointment procedure as well as term of office of the PRB members, including, where relevant, of the PRB chair, the allowances, expenses and remuneration of the PRB members, the tasks of the PRB in accordance and within the limits of this Regulation as well as the specific financing modalities of the PRB activities.

Article 10

Performance scheme

1. To improve the performance of air navigation services and network management in the Single European Sky, a performance scheme for air navigation services and network management shall apply in accordance with this Article and Articles 11 to 18.
2. The performance scheme shall be implemented over reference periods, which shall be a minimum of three years and a maximum of five years. The performance scheme shall include:
 - (a) Union -wide performance targets for *en route* air navigation services in the key performance areas of the environment, capacity and cost-efficiency for each reference period;
 - (b) performance plans including binding performance targets and where applicable, incentive schemes in the key performance areas mentioned in point (a) for each reference period;
 - (c) periodic review, monitoring and benchmarking of performance in the key performance areas mentioned in point (a) and in the light of relevant safety indicators defined in coordination with the Agency.
3. The performance scheme referred to in paragraphs 1 and 2 shall be based on :

- (a) the collection, validation, examination, evaluation and dissemination of relevant data related to the performance of air navigation services and network management from all relevant parties, including air navigation service providers, airspace users, airport operators, national supervisory authorities, national competent authorities, and other national authorities, the Agency, the Network Manager and EUROCONTROL;
- (b) key performance indicators for target setting in the key performance areas referred to in paragraph 2(a) ;
- (c) indicators for monitoring performance in the key performance areas referred to in paragraph 2(a) and relevant safety indicators defined in coordination with the Agency;
- (cc) a methodology to calculate breakdown values;
- (d) principles governing the establishment of performance plans and of performance targets for air navigation services, and for the network management, as well as the content of such plans;
- (e) the assessment of the draft performance plans and targets for air navigation services and network management;
- (f) monitoring of performance plans, including appropriate alert mechanisms for revision of performance plans and targets and for the revision of Union-wide performance targets in the course of a reference period;
- (g) benchmarking of air navigation service providers where relevant;
- (h) incentive schemes including both financial positive incentives and disincentives applicable where an air traffic service provider goes beyond or does not comply with the relevant binding performance targets for air navigation services during the reference period unless this under- or overachievement is due to reasons outside the air traffic service provider's control;
- (i) risk sharing mechanisms in respect of traffic and costs;
- (j) timetables for target setting, assessment of performance plans and targets, monitoring and benchmarking;

- (l) mechanisms to address unforeseeable and significant events which have a material impact on the implementation of the performance and charging schemes.
4. The setting of the performance targets included in the performance plans, the preparation and the assessment of draft performance plans, including the allocation of costs between services, as well as the monitoring and benchmarking of performance of the air navigation services and network management shall take into account the impact of local circumstances as well as factors that fall outside the air traffic service provider's and the Network Manager's control.

Article 11

Establishment of the Union-wide performance targets

1. In accordance with the examination procedure referred to in Article 37(3) and with paragraphs 2 to 3 of this Article, the Commission shall adopt the Union-wide performance targets for *en route* air navigation services in the key performance areas referred to in Article 10(2)a) for each reference period, and define the duration of that period. In conjunction with those Union-wide performance targets, the Commission may define complementary baseline values, alert thresholds, breakdown values and benchmark groups, for the purpose of enabling the assessment and approval of draft performance plans in accordance with the criteria referred to in Article 13 , paragraphs 3 and 3a, and with Article 13a.
2. Union-wide performance targets referred to in paragraph 1 shall be defined on the basis of the following essential criteria:
- (a) they shall strive gradual improvements in respect of the environmental, operational and economic performance of air navigation services;
- (b) they shall be realistic and achievable during the reference period concerned, enabling the efficient, sustainable and resilient provision of air navigation services whilst fostering longer term technological developments;

(c) they shall take into account the economic and operational context of the reference period, including traffic forecast and operational data, as well as the interdependencies between the key performance areas referred to in Article 10(2)a) and the need to fulfil EU environmental objectives.

(d) they shall take into account the safety indicators referred to in article 10(2)c).

3. For the purposes of preparing its decisions on Union-wide performance targets, the Commission shall consult and collect any necessary input from national authorities, EUROCONTROL, and operational stakeholders and may request the opinion of the PRB where a PRB has been designated in accordance with Article 9b.

Article 13

Performance plans and performance targets for air navigation services

1. Member States shall, for each reference period, individually or collectively at functional airspace block level, adopt a draft performance plan, as prepared by the national supervisory authority, with inputs from other national authorities if relevant, based in particular on the input of the designated air traffic service provider(s) in respect of all the air navigation services which that service provider provides and, where applicable, procures from other providers.

The draft performance plan shall be adopted after the setting of Union-wide performance targets and before the start of the reference period concerned.

1a. Before the start of each reference period, each national supervisory authority shall lay down the criteria to allocate the costs common to *en route* and terminal air navigation services between the two categories of services taking into account the principle of cost-relatedness. It shall include this information in the draft performance plan. The national supervisory authority shall ensure that the cost bases for charges comply with those criteria and the requirements of Article 20.

1b. For each reference period, the national supervisory authority shall set and include in the draft performance plan, in the key performance areas referred to in Article 10(2)a), performance targets for *en route* air navigation services consistent with the Union-wide performance targets and performance targets for terminal air navigation services. Those draft performance plans shall take account of the European ATM Master Plan and the interdependencies between the key performance areas referred to in Article 10(2)a) and the need to fulfil the relevant EU safety requirements and EU environmental objectives.

2. The draft performance plan referred to in paragraph 1 shall include relevant information , in particular traffic forecasts and operational data, provided by EUROCONTROL and the Network Manager or local sources as appropriate.

In preparing the draft performance plan the national supervisory authority shall consult airspace users' representatives and, where relevant, military authorities, airport operators and airport coordinators as well as the national competent authority in case the national supervisory authority and the national competent authority are two different entities . The compliance with Regulation (EU) 2018/1139 and the delegated and implementing acts adopted on the basis thereof shall be verified.

3. Consistency of performance targets for *en route* air navigation services, to be included in the draft performance plan, with Union-wide performance targets shall be established taking into account local circumstances and interdependencies between the key performance areas referred to in Article 10(2)a) and safety and according to all or part of the following criteria:

(a) where breakdown values have been established in conjunction with Union-wide performance targets, comparison of the performance targets contained in the draft performance plan with those breakdown values;

(b) evaluation of performance improvements over time, for the reference period covered by the performance plan, and additionally for the overall period comprising both the preceding reference period and the reference period covered by the performance plan;

(c) comparison of the planned level of performance of the air traffic service provider concerned within the relevant benchmark group.

The assessment of the consistency of performance targets in the key performance area of cost-efficiency shall exclude the costs referred to in point (b) (d) and (e) of Article 20(3).

3a. In addition, the adopted draft performance plan must comply with the following conditions:

(a) key assumptions applied as a basis for target setting and measures intended to achieve the targets during the reference period, including baseline values, traffic forecasts and economic assumptions used, must be accurate, adequate and coherent at the time of preparing the performance plan;

(b) the adopted draft performance plan must be complete in terms of data and supporting material;

(c) cost bases for charges must comply with Article 20.

3b. The adopted draft performance plans shall be made publicly available, without prejudice to confidentiality of sensitive information.

5. The adopted draft performance plans shall be submitted to the Commission for assessment and approval in accordance with Article 13a.

Article 13a

Assessment of performance targets and performance plans by the Commission

1. The Commission shall assess the performance targets for *en route* air navigation services and the adopted draft performance plans referred to in Article 13 according to the criteria and conditions set out in Article 13(3) and (3a).

2. Where consistency of performance targets for *en route* air navigation services with the Union-wide performance targets cannot be established on the basis of the criteria laid down in Article 13(3), the Commission shall assess whether the divergence from these criteria can be justified by local circumstances and/or interdependencies between key performance areas referred to in Article 10(2)a), in the light of the information provided in the draft performance plans and safety considerations. If that is the case, performance targets for *en route* air navigation services shall be considered consistent with Union-wide targets.

The Commission may allow a deviation of performance targets for *en route* air navigation services from Union-wide performance targets with respect to cost-efficiency, or capacity key performance areas where necessary to ensure consistency of performance targets for those services with the Union-wide performance targets with respect to environment key performance area. In addition, deviations shall be allowed to enable compliance with the relevant EU safety requirements set out in Regulation (EU) 2018/1139 and the implementing and delegated acts adopted on the basis thereof.

3. Where the Commission finds that the adopted draft performance plan meets the criteria and conditions set out in Article 13(3) and (3a) read in combination with paragraph 2 of this Article, it shall approve it in accordance with the examination procedure referred to in Article 37(3).

4. Where the Commission finds that there are doubts about the compliance of the draft performance plan with the criteria and conditions set out in Article 13(3) and (3a) read in combination with paragraph 2 of this Article, it shall initiate a detailed examination of that draft performance plan, requesting additional information from the Member State concerned if necessary.

5. Where, having carried out the detailed examination, the Commission finds that the draft performance plan meets the criteria and conditions set out in Article 13(3) and (3a) read in combination with paragraph 2 of this Article, it shall approve it in accordance with the examination procedure referred to in Article 37(3).

Where however the Commission finds that the draft performance plan is not consistent with those criteria and conditions, the Commission shall adopt a decision setting out the corrective measures which the Member State(s) concerned is to take, in accordance with the examination procedure referred to in Article 37(3).

The Member State(s) concerned shall communicate to the Commission the measures that it has taken pursuant to that decision, as well as information demonstrating that those measures comply with that decision.

Where the Commission finds that those measures are sufficient to ensure compliance with its decision, it shall notify the Member State(s) concerned thereof and approve the draft performance plan in accordance with the examination procedure referred to in Article 37(3).

Where the Commission finds that those measures are not sufficient to ensure compliance with the decision, it shall notify the Member State concerned and take, where appropriate, action to address the non-compliance, including through actions provided for in Article 258 of the Treaty on the Functioning of the European Union.

6. Draft performance plans approved by the [...] Commission in accordance with this Article shall be adopted by the Member States concerned as definitive plans, and shall be made publicly available, without prejudice to confidentiality of sensitive information.

Article 13b

Performance monitoring

1. The national supervisory authority, in cooperation with the national competent authority where it is a different entity, shall assess whether the air navigation services provided in the airspace under their responsibility meet the performance targets contained in the performance plans approved in accordance with Article 13a, whether those plans are implemented correctly and whether it shall implement the positive or negative incentives following from the schemes referred to in Article 10(3)h).

2. The national supervisory authority shall issue regular reports on the monitoring of performance of air navigation services provided by the designated air traffic service providers and make the results of those assessments publicly available without prejudice to confidentiality of sensitive information.

The designated air traffic service providers shall provide the information and data necessary for such monitoring . This shall include information and data related to actual costs of the services provided and, where applicable, without prejudice to confidentiality of sensitive information, and data related to actual costs of the services procured from other service providers.

2a. Where performance targets contained in the performance plans are not reached or the performance plan is not correctly implemented, the national supervisory authority shall assess whether this is due to safety considerations or external factors beyond the air traffic service provider's control. In particular, the national supervisory authority shall assess the impact of any detrimental effect of measures adopted in order to improve the overall functioning of the network on the actual performance of the air traffic service provider. In case the underperformance cannot be justified by safety considerations or external factors, the national supervisory authority shall require corrective measures to be implemented by the air traffic service provider.

2b. Financial incentives and disincentives shall take into account the deterioration of service and be proportionate to the magnitude of the variation between the achieved performances and the performance targets set in the approved performance plans.

Financial incentives and disincentives may only be applied where the over or under performance is attributable to the air traffic service provider concerned. Such disincentives shall not be such as to affect the financial viability of that air traffic service provider and the safety and quality of the services provision.

3. The Commission shall carry out regular assessments of the overall achievement of the Union-wide performance targets and present the results to the committee referred to in Article 37(1).

Article 16

Network Performance Plan

1. The Network Manager shall, for each reference period, draw up, in accordance with the cooperative decision-making process referred to in Article 27(7), a draft Network Performance Plan.

The draft Network Performance Plan shall be drawn up after the setting of Union-wide performance targets and before the start of the reference period concerned. It shall contain performance targets in the key performance areas referred to in Article 10(2)a).

2. The draft Network Performance Plan shall be submitted to the Commission for assessment and adoption.

2a. The Commission shall assess the draft Network Performance Plan based on the following essential criteria:

(a) consideration of performance improvements over time, for the reference period covered by the performance plan, and for the timeframe comprising both the preceding reference period and the reference period covered by the performance plan as well as contribution towards Union wide performance targets;

(b) completeness and consistency of the draft Network Performance Plan in terms of data and supporting materials, including key assumptions applied and traffic forecasts.

2b. Where the Commission finds that the draft Network Performance Plan is complete and shows adequate performance improvements, it shall adopt the draft Network Performance Plan as a definitive plan. Otherwise, the Commission shall request the Network Manager to submit a revised draft Network Performance Plan.

Article 17

Revision of performance targets and performance plans during a reference period

1. Where, during a reference period, Union-wide performance targets are no longer adequate, in light of significantly changed circumstances or safety considerations, and where the revision of one or several targets is necessary and proportionate, the Commission shall revise those Union-wide performance targets. Article 11 shall apply to such decision.

Where, following such revision, the performance targets contained in the performance plans adopted pursuant to Article 13a(6) are no longer consistent with the Union-wide performance targets, Member States shall revise those plans with respect to the performance targets concerned. Articles 13 and 13a shall apply to the revision of those plans. The consultation referred to in Article 13(2) may be limited, for the purpose of this subparagraph, to the performance targets and parts of the draft performance plans which are directly or indirectly affected by the revision.

Following the revision referred to in the first subparagraph, the Network Manager shall draw up a new draft Network Performance Plan. Article 16 shall apply to the adoption of that new plan.

2. The decision on the revised Union-wide performance targets referred to in paragraph 1 shall include transitional provisions for the time period until the definitive revised performance plans become applicable. Revised Union-wide targets and transitional provisions shall not apply retroactively.

2a. In case of a network crisis which prevents the issuing of reliable traffic forecasts, the transitional provisions mentioned in paragraph 2 may include the suspension of the performance system until new reliable forecasts are available. In such a case, the Commission shall define the relating conditions, including necessary adaptations to applicable charges, in the decision referred to in paragraph 1.

3. Member States may revise one or several performance targets, during a reference period where alert thresholds are reached, or where it is demonstrated that the initial data, assumptions and rationales underpinning the performance targets are to a significant and lasting extent no longer accurate due to circumstances that were unforeseeable at the time of the adoption of the performance plan.

In such a case, Member States shall revise the performance plans with respect to the targets concerned, in accordance with the procedures set out in Articles 13 and 13a. The consultation referred to in Article 13(2) may be limited, for the purpose of this paragraph, to the performance targets and parts of the performance plans which are directly or indirectly affected by the revision.

Article 18

Implementation of the performance scheme

For the implementation of the performance scheme, the Commission shall, by means of implementing acts adopted in accordance with the examination procedure referred to in Article 37(3), adopt detailed requirements and procedures in respect of Articles 10(3), 11, 13, 13a, 13b, 16 and 17, in particular as regards the preparation, assessment, approval and revision of performance plans, the setting of performance targets, the monitoring of performance , methodology for benchmarking, the incentive schemes, the issuance of corrective measures, and the timetables for all procedures.

Article 19

Principles for the charging scheme

1. Without prejudice to the possibility for Member States to finance the provision of air navigation services covered in this Article through public funds, charges for air navigation services shall be determined, imposed and enforced on airspace users in accordance with Article 15 of the Chicago Convention and with this Article as well as Articles 20 to 22 and the implementing acts adopted on the basis of Article 23. The charging scheme set up under this Article as well as Articles 20 to 22 shall be consistent with the charging system for *en route* charges established by EUROCONTROL, in particular EUROCONTROL Principles for Establishing the Cost-Base for En-Route Charges and the Calculation of the Unit Rates.
2. Charges shall be based on the costs of air navigation service providers incurred in relation to the provision of services and functions made available to, or for the benefit of, airspace users over fixed reference periods as defined in Article 10(2). Those costs may include a reasonable return on assets.
3. 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 whilst reducing the environmental impact of aviation.

5. Revenues received by an air navigation service provider from charges imposed on airspace users in accordance with this Article shall not be used to finance services which that air navigation service provider provides under market conditions in accordance with Article 8 or to finance any other commercial activity performed by that provider.

6. Financial data on determined and actual costs of designated air traffic service providers shall be reported to national supervisory authorities.

Article 20

Cost bases for charges

1. The cost bases for charges for air navigation services shall consist of the determined costs, as established in the performance plans adopted in accordance with Article 13a(6), related to the provision of those services in the *en route* charging zone and terminal charging zone concerned.

2. The determined costs referred to in paragraph 1 shall include the costs of relevant facilities and services, cost of capital and depreciation of assets, as well as the costs of maintenance, operation, management and administration and other staff costs.

3. The determined costs referred to in paragraph 1 shall also include the following costs:

(b) costs related to the oversight of air navigation services incurred by national supervisory authorities, national competent authorities, and other national authorities, where the Member State so decides ;

(c) costs incurred by the air navigation service providers in relation to the provision of air navigation services , where the Member States so decides;

(d) costs incurred by the air navigation service providers in relation to network functions, in particular in relation to the cooperation with the Network Manager and other functions as described in Article 2(9);

(e) costs stemming from the EUROCONTROL International Convention relating to cooperation for the safety of air navigation of 13 December 1960 as last amended, where the Member State so decides.

4. Determined costs shall not include the costs of penalties imposed by Member States in accordance with Article 42.

5. Costs that pertain to both *en route* air navigation services and terminal air navigation services shall be allocated in compliance with the criteria laid down by the national supervisory authority in accordance with Article 13(1a). Cross-subsidy between *en route* air navigation services and terminal air navigation services shall not be allowed. Cross-subsidy shall be allowed between different air navigation services within either one of those two categories only when justified for objective reasons, subject to transparent identification in accordance with Article 25(3).

6. Designated air traffic service providers shall provide details of their cost base to the national supervisory authority, and the Commission. To this end, costs shall be broken down by distinguishing staff costs, operating costs other than staff costs, depreciation costs, cost of capital, costs referred to in Article 20(3), and exceptional costs.

Article 21

Charging zone and unit rates

1. Unit rates shall be set per calendar year and for each charging zone, on the basis of the determined costs and the traffic forecasts established in the performance plans as well as applicable adjustments deriving from previous years and other revenues.

1a. Without prejudice to Article 20(5), first subparagraph, Member States shall define, before the start of a reference period, the charging zones for air navigation services and shall identify the air traffic service providers falling under the scope of each charging zone. The Commission shall, by means of an implementing act adopted in accordance with the examination procedure referred to in Article 37(3) define the conditions under which Member States may modify or establish a new terminal charging zone during a reference period.

2. Unit rates shall be set by the Member States, and be subject to verification by the Commission that they comply with Article 19, Article 20 and with this Article. Where the Commission finds that a unit rate does not fulfil those requirements, the unit rate shall be reviewed accordingly by the Member State concerned, and amended as appropriate.

Article 22

Establishment of charges

1. Charges shall be levied on airspace users for the provision of air navigation services, under non-discriminatory conditions, taking into account the relative productive capacities of the different aircraft types concerned. 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.

2. The *en-route* charge for air navigation services for a given flight in a given *en route* charging zone shall be calculated on the basis of the unit rate established for that *en route* charging zone and the *en route* service units for that flight.

3. The terminal charge for air navigation services for a given flight in a given terminal charging zone shall be calculated on the basis of the unit rate established for that terminal charging zone and the terminal service units for that flight. For the purpose of calculating the terminal charge, the approach and departure of a flight shall count as a single flight.

4. Exemption of certain airspace users or flights from air navigation charges, especially those using or operated with light aircraft and State aircraft, may be permitted, provided that the cost of such exemption is covered by other resources and is not passed on to other airspace users.

5. Charges may be modulated to encourage air traffic service providers and airspace users to support improvements in environmental performance, or service quality such as the use of the most fuel-efficient available routing, increased use of sustainable alternative fuels, increased capacity, reduced delays and sustainable development, while maintaining an optimum safety level, in particular for implementing the European ATM Master Plan. The modulation shall consist of financial advantages or disadvantages and shall be revenue neutral for air traffic service providers.

5a. The Commission shall, in consultation with the Member States, air traffic service providers and airspace users conduct a feasibility study, on the impact of the modulation of charges on air traffic and on stakeholders, including on flight paths, capacity, fleet composition and costs of airspace users, as well as on mechanisms to ensure revenue neutrality of air traffic service providers. This study shall also cover the contribution of that modulation to achievement of the Single European Sky objectives referred to in Article 1(1) and in the Commission's communication on the European Green Deal, taking into consideration competitiveness aspects, existing incentive schemes and other known alternatives. On the basis of that study, the Commission may adopt guidelines to enable Member States to implement modulation of charges on a voluntary basis.

Article 23

Implementation of the charging scheme

For the implementation of the charging scheme, the Commission shall, by means of implementing acts adopted in accordance with the examination procedure referred to in Article 37(3), adopt detailed requirements and procedures in respect of Articles 19, 20, 21 and 22 in particular regarding the cost bases and determined costs, the setting of unit rates, and risk sharing mechanisms and the modulation of charges.

Article 24

Review of compliance with the performance and charging schemes

1. The Commission shall regularly review the compliance with Articles 10 to 17 and 19 to 22 and the implementing acts referred to in Articles 18 and 23, by the Member States, in particular the national supervisory authorities . The Commission shall act in consultation with the PRB, where a PRB has been designated in accordance with Article 9b, and with national supervisory authorities.
2. Where the Commission, has indications of non-compliance with the provisions referred to in paragraph 1 , it may initiate an investigation . It shall conclude the investigation within four months, after having heard the Member State, and the national supervisory authority concerned.

3. Without prejudice to Article 41(1), the Commission shall share the results of the investigation with the Member State and, where appropriate, the air traffic service provider concerned and may issue an opinion on whether Articles 10 to 17 and 19 to 22 and the implementing acts referred to in Articles 18 and 23 have been complied with by that Member States . It shall notify this opinion to the Member State concerned.

Article 25

Transparency of accounts of air navigation service providers

1. Air navigation service providers, independently of their system of ownership or legal structures, shall annually draw up 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 air navigation service provider, full compliance with the international accounting standards is not possible, the provider shall achieve such compliance to the maximum possible extent. Air navigation service providers shall publish an annual report and regularly undergo an independent audit for the accounts referred to in this paragraph.

2. National supervisory authorities shall have the right to access the accounts of the air navigation service providers under their supervision. Member States may decide to grant access to these accounts to national supervisory authorities of other Member States.

3. Air navigation service providers shall, in their internal accounting, keep separate accounts for each air navigation service as they would be required to do if these services were carried out by separate undertakings with a view to avoiding discrimination, cross-subsidisation and distortion of competition. An air navigation service provider shall also keep separate accounts for each activity where:

- (a) it provides air navigation services procured in accordance with Article 8(1) and air navigation services not covered by that provision;
- (b) it provides air navigation services and carries out other activities, of whatever kind, including CIS;

(c) it provides air navigation services in the Union and in third countries.

The determined and actual costs deriving from air navigation services shall be broken down into costs categories in accordance with article 20(6) and they shall be made publicly available, subject to the protection of confidential information.

4. The financial data on costs reported in accordance with Article 19(6) and other information relevant for the calculation of unit rates shall be audited or verified by the national supervisory authority or an entity independent of the air navigation service provider concerned and approved by the national supervisory authority. Without prejudice to confidentiality of sensitive information, the conclusions of the audit shall be made publicly available.

CHAPTER IV

NETWORK MANAGEMENT

Article 26

Network functions

1. The air traffic management network functions shall contribute to the sustainable and efficient use of the airspace and of scarce resources. They shall also ensure that airspace users can operate environmentally optimised trajectories and profiles, while allowing fair and reasonable access to airspace and air navigation services and minimizing congestion. Those network functions, enumerated in paragraph 2 , shall support seamless access to air navigation services by airspace users as well as the achievement of the performance targets while supporting initiatives at regional and local level and shall be based on operational requirements . They shall be without prejudice to Member States' sovereignty over their airspace and to their responsibilities relating to public order, public security and defence matters.

1a. Without prejudice in particular to Articles 44 and 46 of Regulation (EU) 2018/1139 and the delegated and implementing acts adopted on the basis thereof, Member States shall retain the complete and exclusive competence for the design and management of their airspace structures and of their route network. In this regard, Member States shall take into account environmental aspects, air traffic demands, seasonality and complexity of air traffic and of performance plans. Before deciding on those aspects, they shall consult airspace users concerned or groups representing such airspace users and military authorities as appropriate.

2. The network functions referred to in paragraph 1 are the following:

- (a) design of an airspace structure offering the required level of safety, capacity, flexibility, responsiveness, environmental performance and seamless provision of expeditious air navigation services, with due regard to security and defence needs;
- (b) ATFM;

(c) the 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.

(d) delivery of air traffic control capacity in the network in accordance with commitments set out in the NOP ;

(e) management of network crisis.

(f) ATFM delay attribution;

(g) planning and implementation activities of the deployment of infrastructure in the European ATM network, in accordance with the European ATM Master Plan .

3. Member States and all relevant operational stakeholders shall execute network functions with the support of the Network Manager which shall execute the tasks specified in Article 27(4).

4. The measures taken for the implementation of the functions listed in paragraphs 2 shall be of purely operational or technical nature and shall not involve the exercise of political discretion. They shall take into account of the specificities of the Member States and of proposals established at local level. They shall be performed in coordination with civil and military authorities, in particular in accordance with agreed procedures concerning the flexible use of airspace.

Article 27

The Network Manager

1. In order to achieve the objectives referred to in Article 26 (1), the Commission, supported by the Agency in accordance with Regulation (EU) 2018/1139, shall ensure that the Network Manager contributes to the execution of the network functions set out in Article 26 (2), in accordance with this Article. The Commission shall supervise the proper execution of its tasks by the Network Manager.

2. The Commission shall , appoint EUROCONTROL or another impartial and competent body to carry out the tasks of the Network Manager. To this end, the Commission shall adopt an implementing act in accordance with the examination procedure referred to in Article 37(3). This appointment Decision shall include the terms and conditions of the appointment, including the financing of the Network Manager, and detailed the specific tasks of the Network Manager in line with, and within the limits of, this Article and Articles 16 and 26 and the relevant implementing acts adopted on the basis of Articles 18 and 27(8). The list of tasks of the Network Manager shall be accompanied by clear specification of the required services and performance, against which the performance of the Network Manager shall be measured, and, where appropriate, by appropriate agreements to be concluded between the Commission and the Network Manager, such as service level agreements.

3. The Network Manager shall execute its tasks in an impartial and cost efficient manner and shall be subject to appropriate governance and independence. If the competent body appointed as the Network Manager has also regulatory functions, organisational separation with such functions shall be ensured. In the execution of its tasks, the Network Manager shall take into consideration the needs of the whole ATM network while safeguarding defence capabilities.

4. The Network Manager shall execute following tasks in support of the network functions referred to in Article 26(2):

(a) support the development of an airspace structure, offering the required level of safety, capacity, flexibility, responsiveness, environmental performance and seamless provision of expeditious air navigation services, with due regard to security and defence needs;

(b) coordination of ATFM ;

(c) 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;

(d) facilitation of delegation of air traffic services provision where approved by the concerned Member State taking into account the necessary agreements for the coordination of general and operational air traffic and the need to maintain adequate coordination in the relevant airspace structures;

- (da) preparation of the NSP and establishment of the NOP;
- (e) coordination and support in the delivery of air traffic control capacity in the network in accordance with commitments by operational stakeholders as set out in the NOP;
- (f) coordination and support in the management of network crisis;
- (g) support to ATFM delay attribution including the post operations adjustment process involving air navigation service providers, airports and national authorities to address issues that relate to ATFM delay measurement, classification and attribution;
- (h) coordination and support in the planning and implementation activities of the deployment of infrastructure in the European ATM network, in accordance with the European ATM Master Plan, through active participation of operational stakeholders in management and governance, and taking into account military and operational needs and associated operational procedures, where appropriate;
- (i) the monitoring of the functioning of the European ATM network infrastructure.

4 a. The Network Manager shall propose support measures on operational matters aimed at safe and efficient planning and operations of the network under normal and network crisis conditions and measures aimed at the continuous improvement of network operations in the Single European Sky and the overall performance of the network, especially regarding the implementation of the performance scheme. The action taken by the Network Manager shall fully integrate the airports in the network.

5. The Network Manager shall propose measures in case the performance targets referred to in Article 10 are not adequately reflected in the capacity to be delivered by individual air traffic service providers and agreed between the Network Manager and those air traffic service providers in the NOP .

6. The Network Manager shall, in coordination with relevant parties, advise the Commission on the deployment of the ATM network infrastructure in accordance with the European ATM Master Plan, in particular to identify investments necessary for the network.

7. All measures taken by the Network Manager in the execution of its tasks shall be taken through a cooperative decision-making process. Parties to the cooperative decision-making process shall act to the maximum extent possible with a view to improving the functioning and performance of the network, in particular as regards the achievement of the Union wide targets in the key performance area of environment, taking into account essential security interests and regional and local circumstances.

7a. The cooperative decision-making process referred to in paragraph 7 shall be based on:

- a) the appropriate and regular consultation of operational stakeholders, airport slot coordinators, Member States and, where relevant, the Agency and the Commission;
- b) detailed working arrangements established by the Network Manager together with, in particular operational stakeholders and Member States, as well as processes for operations established by the Network Manager to address planning and operational aspects related to the execution of network functions.

The consultation referred to in point a) and the detailed working arrangements referred to in point b) shall take into account the specific features and requirements of each network function.

The cooperative decision-making process shall aim at consensus. Where Member States' sovereignty over their airspace is concerned, the consent of the Member State(s) concerned is required.

When measures related to the execution of the Network Manager's tasks are disputed by one or several operational stakeholder(s), the issue shall be referred for resolution to the Network Management Board.

7b. A Network Management Board shall be established by means of the implementing acts referred to in paragraph 8 in view of ensuring appropriate governance over the execution of the Network functions.

The Network Management Board shall be responsible for approving or endorsing measures taken or proposed by the Network Manager in the conditions set out in the implementing act referred to in paragraph 8, for approving the specifications for the consultation and the detailed working arrangements referred to in paragraph 7a, a) and b), for approving the NOP and endorsing the NSP before it is approved by the Commission together with Member States, for monitoring the implementation of network functions and for providing opinions or recommendations on specific issues.

The Network Management Board shall be composed of representatives of the operational stakeholders, of slot coordinators, of representatives of the Commission, of representatives of the Network Manager and of representatives of Eurocontrol.

7c. Member States shall be fully involved in decisions of strategic importance.

8. By way of implementing acts adopted in accordance with the examination procedure referred to in Article 37(3), the Commission shall establish detailed rules for the implementation of Article 26 and this Article, in particular for the execution of the network functions, including on crisis management; on the appointment of the Network Manager, the terms and conditions of such appointment and on the detailed tasks of the Network Manager in relation to the network functions; on the composition, the functioning, the decision-making and the detailed tasks of the Network Management Board including in relation with crisis management; on the cooperative decision-making process; the criteria and factors that the Network Manager and the Network Management Board must follow when exercising the tasks conferred on them and on the network governance mechanisms.

Article 28

Transparency of accounts of the Network Manager

1. The financial accounts of the Network Manager shall be drawn up, and published annually. Those accounts shall comply with the international accounting standards adopted by the Union. Where, due to the legal status of the Network Manager, full compliance with the international accounting standards is not possible, the Network Manager shall achieve such compliance to the maximum possible extent.
2. The Network Manager shall publish an annual report on its activities and regularly undergo an independent audit.

Article 30

Relations with military authorities

Member States shall, within the context of the common transport policy, 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.

CHAPTER V

AIRSPACE, INTEROPERABILITY AND TECHNOLOGICAL INNOVATION

Article 32

Electronic aeronautical information

Without prejudice to the publication by Member States of aeronautical information and in a manner consistent with that publication, the Network Manager, in cooperation with EUROCONTROL, shall establish a Union-wide aeronautical information infrastructure to further the availability of electronic aeronautical information of high quality, presented in an easily accessible way and serving the requirements of all relevant users in terms of data quality and timeliness. The aeronautical information thus made available shall only be the information that complies with the essential requirements set out in point 2.1 of Annex VIII of Regulation (EU) 2018/1139.

Article 32a

Rules of the air and airspace classification

The Commission shall, in accordance with the examination procedure referred to in Article 37(3):

- a) adopt appropriate provisions on rules of the air based on ICAO standards and recommended practices;
- b) adopt appropriate provisions to ensure uniform implementation of the ICAO airspace classification with appropriate adaptation, with a view to ensure the seamless provision of safe and efficient air traffic services within the Single European sky.

Article 33

Flexible use of airspace

1. Taking into account the characteristics and nature of military activity in each Member State as well as the organisation of military aspects under their responsibility, Member States shall ensure the application within the single European sky of the concept of the flexible use of airspace , 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 in the light of the reports submitted by Member States, uniform conditions for the application of the concept of the flexible use of airspace within the single European sky are needed, the Commission shall , within the limits of the common transport policy and without prejudice to Member States' responsibilities over their airspace, adopt implementing acts in accordance with the examination procedure referred to in Article 37(3).
4. In cases where the application of this Article gives rise to significant operational difficulties, Member States may temporarily suspend such application on condition that they inform without delay the Commission and the other Member States thereof. Following the introduction of a temporary suspension, adjustments to the rules adopted under paragraph 3 may be worked out for the airspace under the responsibility of the Member State(s) concerned.

Article 34

SESAR coordination

The entities in charge of tasks established in Union law in the areas of coordination of the SESAR definition phase, the SESAR development phase and the SESAR deployment phase, as the case may be, shall ensure effective coordination between those three phases so as to achieve a seamless and timely transition between them, focussing in particular on the industrialisation phase.

All relevant civil and military stakeholders shall be involved to the widest possible extent.

The Commission shall put in place mechanisms for monitoring the effectiveness of SESAR coordination.

Article 35

Common projects

1. The Commission may set up common projects, based on the needs for synchronisation amongst stakeholders, for implementing the essential operational changes identified in the European ATM Master Plan having reached sufficient maturity in order to enable interoperable capabilities in all Member States with a view to improving the performance of the Single European Sky.
2. The Commission may also establish governance mechanisms for common projects and their implementation. All relevant civil and military stakeholders shall be involved in these mechanisms to the widest possible extent and, where possible and as appropriate, have a leading role.
3. Common projects may be 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 38, exploring prioritisation and all appropriate means for financing the implementation thereof.
4. The Commission shall establish the common projects and governance mechanisms referred to in paragraphs 1 and 2 through implementing acts adopted in accordance with the examination procedure referred to in Article 37(3).

CHAPTER VI

FINAL PROVISIONS

Article 37

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.
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 38

Consultation of stakeholders

1. Member States, national supervisory authorities, the PRB, where a PRB has been designated in accordance with Article 9b, and the Network Manager shall establish consultation mechanisms for appropriate consultation of stakeholders for the exercise of their tasks in the implementation of this Regulation.

2. The Commission shall establish a mechanism at Union level to consult the relevant stakeholders on matters related to the implementation of this Regulation . The specific Sectoral Dialogue Committee set up under Commission Decision 98/500/EC shall be involved in the consultation. For the purpose of point (e) of paragraph 3, when consultation relating to military aspects is required, the Commission shall, in addition to Member States, consult the European Defence Agency and national military authorities.

3. For the purposes of paragraphs 1 and 2, at least the following operational and non-operational stakeholders shall be consulted if relevant:

- (a) air navigation service providers or groups representing them;
- (b) the Network Manager;
- (c) airport operators or groups representing them;
- (d) airspace users or groups representing them;
- (f) the manufacturing industry;
- (g) professional staff representative bodies;
- (h) national authorities, including competent national military authorities;
- (i) airport slot coordinators.
- (j) non-governmental organisations with an interest in aviation or ATM.

Article 38a

Relations with stakeholders

The air traffic service providers shall establish consultation mechanisms to consult the relevant airspace users, aerodrome operators and military authorities on all major issues related to services provided, including relevant changes to airspace configurations, or major investments which have a relevant impact on air traffic management and air navigation service provision and/or charges.

Article 39

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, in the framework of agreements concluded with neighbouring third countries in particular in the EUROCONTROL area or in the ICAO EUR region, to extend the Single European Sky to those countries. In addition, they shall endeavour to cooperate with those countries either in the context of agreements on cross-border service provision with third countries, on cooperation on ATM modernisation, on network functions, or in the framework of the Agreement between the Union and EUROCONTROL providing a general framework for enhanced cooperation, reinforcing the ‘pan-European dimension’ of ATM.

This Article shall be without prejudice to the decision of Member States on whether the Single European Sky should be extended to their overseas countries and territories or autonomous territories in other ICAO regions.

Article 40

Support by other bodies

The Commission may request support from other bodies for the fulfilment of its tasks under this Regulation , including from EUROCONTROL in the framework of the Agreement between the Union and EUROCONTROL providing a general framework for enhanced cooperation.

Article 41

Confidentiality

1. Neither the national supervisory authorities, acting in accordance with their national legislation, nor the national competent authorities, nor the Commission, nor the PRB, nor the Network Manager shall disclose information of a confidential nature, in particular information about air navigation service providers, their business relations or their cost and revenues components.
2. Paragraph 1 shall be without prejudice to the right of disclosure by national supervisory authorities and the Commission where this is essential for the fulfilment of their duties . In that 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 commercially sensitive information.
3. Information and data made accessible pursuant to Articles 13(3b), 13a(6), 13b(2), 25(3) and 25(4) or reported pursuant to Articles 19 (6) in particular as regards determined costs and actual costs of designated air traffic service providers shall be publicly disclosed , subject to the protection of commercial interests of a natural or legal person, including intellectual property, unless there is an overriding public interest in disclosure.

Article 42

Penalties

Member States shall lay down rules on penalties applicable to infringements of this Regulation and of the implementing acts adopted on the basis thereof in particular by airspace users, airport operators and air navigation 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 43

Evaluation

1. The Commission shall conduct an evaluation to assess the legal, social, economic and environmental impacts of this Regulation and its added value both at national and European level 5 to 8 years after its entry into force. When justified for this purpose, the Commission may request from the Member States, including military authorities, information relevant to the application of this Regulation.
2. The Commission shall submit its findings to the European Parliament and to the Council. The findings of the evaluation shall be made public.

Article 44

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 45

Repeal

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

Article 46

Entry into force and application

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

2. Article 3(3) and Article 25(3) shall apply from *[OP please insert the date - 72 months after the entry into force of this Regulation]*.

Articles 10 to 24 shall apply as from one year after its adoption. However, Article 11 of Regulation (EC) No 549/2004 and Article 15 of Regulation (EC) No 550/2004, and the implementing acts adopted on the basis thereof, shall continue to apply for the purposes of the implementation of the performance and charging schemes pertaining to the third reference period. Commission Implementing Decision (EU) 2019/709, as adopted on 6 May 2019, shall continue to apply until the end of the fourth reference period.

Article 27(4) and Article 32 shall apply to the Network Manager from the day on which an appointment decision, adopted in accordance with Article 27(2) becomes applicable.

Article 42 shall apply from *[OP please insert the date of entry into force of this Regulation]*.

Measures adopted by Member States pursuant to that Article shall apply from:

- *[OP please insert the date - 72 months after the entry into force of this Regulation]* with respect to infringements of Article 3(3) and Article 25(3);

- from one year after the adoption of this Regulation with respect to infringements to Articles 10 to 24.

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

Done at Brussels,

For the European Parliament

The President

For the Council

The President

ANNEX II

Repealed Regulations with the amendment thereto

Regulation (EC) No 549/2004 of the European Parliament and of the Council (OJ L 96, 31.3.2004, p. 1)	
Regulation (EC) No 550/2004 of the European Parliament and of the Council (OJ L 96, 31.3.2004, p. 10)	
Regulation (EC) No 551/2004 of the European Parliament and of the Council (OJ L 96, 31.3.2004, p. 20)	
Regulation (EC) No 1070/2009 of the European Parliament and of the Council (OJ L 300, 14.11.2009, p. 34)	Only Articles 1, 2 and 3

ANNEX III

CORRELATION TABLE

Regulation 549/2004	Regulation 550/2004	Regulation 551/2004	This Regulation
Article 1(1) to (3)			Article 1(1) to (3)
Article 1(4)			-
-			Article 1(4)
Article 2, point 1(a) and (b)			Article 2, point 5(a) and (b)
Article 2, point 2			Article 2, point 1
Article 2, point 3			Article 2, point 2
-			Article 2, point 2a
Article 2, point 4			Article 2, point 4
-			Article 2, point 6
Article 2, point 5			Article 2, point 3
Article 2, point 6			Article 2, point 11
Article 2, point 7			Article 2, point 12
-			Article 2, point 13
Article 2, point 8			Article 2, point 14
Article 2, point 9			Article 2, point 8
Article 2, point 10			Article 2, point 9
Article 2, point 11			Article 2, point 10

Article 2, point 12			Article 2, point 17
-			Article 2, points 18 to 20
Article 2, point 13			Article 2, point 16
Article 2, point 13a			Article 2, point 33
Article 2, point 14			-
-			Article 2, point 21
-			Article 2, point 22
Article 2, point 16			Article 2, point 23
Article 2, point 17			Article 2, point 32
Article 2, point 18			-
Article 2, point 19			Article 2, point 24
-			Article 2, points 25 and 26
Article 2, point 20			Article 2, point 31
Article 2, point 22			Article 2, point 34
Article 2, point 23			-
Article 2, point 23a			Article 2, point 35
-			Article 2, points 35b and 35c
Article 2, point 23b			Article 2, point 15
Article 2, points 24 and 25			-
Article 2, point 26			Article 2, point 36

Article 2, point 27			-
Article 2, point 28			Article 2, point 37
Article 2, point 29			Article 2, point 38
-			Article 2, points 39 and 40
Article 2, point 30			Article 2, point 41
-			Article 2, points 42 and 43
-			Article 2, points 43a to 43c
Article 2, point 31			Article 2, point 44
-			Article 2, point 44a
-			Article 2, point 45
Article 2, point 32			-
Article 2, point 33			Article 2, point 46
Article 2, point 34			Article 2, point 47
-			Article 2, points 48 to 52
Article 2, points 35 and 36			-
Article 2, point 38			Article 2, point 53
Article 2, point 39			Article 2, point 54
-			Article 2, point 56

Article 2, point 40			Article 2, point 57
Article 2, point 41			Article 2, point 27
-			Article 2, points 28 to 30
			Article 2a
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Article 4(2)			Article 3(3)
-			Article 3(4)
Article 4(3)			Article 3(2)
Article 4(4)			
-			
Article 4(5)			Article 3(9)
-			Articles 4 to 9
Article 5(1)			Article 37(1)
Article 5(2)			
Article 5(3)			Article 37(3)
-			Article 37(4)
Article 5(4) and (5) and Article 6			-
Article 7			Article 39
Article 8(1)			Article 40

Article 8(2)			-
-			Article 41
Article 9			Article 42
Article 10(1)			Article 38(1)
Article 10(2)			Article 38(2)
Article 10(3)			Article 38(3)
-			Article 38a
Article 11(1) first sentence, and Article 11(3) point (d) first and third sentences			Article 10(1)
Article 11(1), points (a) to (c)			Article 10(2)
Article 11(2)			-
Article 11(3), point (a)			Article 11
Article 11(3), points (b) and (c)			Articles 13(1), (3), (3 ^a) and (3b)
-			13(1a) (1b)
11(3)b			13(2)
Article 11(3), point (c) first sub-paragraph			13(5)

Article 11(3), point (c) first sub-paragraph			Article 13a(1)
-			13a(2)
Article 11(3), point a			13a(3)
Article 11(3), point (c), sub-paragraphs 2-4			Article 13a(4) and (5)
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Article 11(3), point (d) second sentence			Article 13b(2)
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Article 11(4), point (b) and (c)			-
Article 11(4), point (d)			Article 10(3), point (e)
Article 11(4), point (e)			Article 10(3), point (f)
-			Article 10(3), points

			(g) to (k)
Article 11(4) second subparagraph			Article 18
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Article 11(6)			Article 18
-			Articles 19 to 35
Article 12(1) and 12(2) up to “in Article 3,”			Article 43(1)
Article 12(2), part of the first sentence starting with “and shall firstly report to the European Parliament”			Article 43(2)
Article 12(3) and (4)			-
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	-		

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	Article 7(7)		Article 6(1) second subparagraph, and Article 6(4) and (5)
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	Article 8(1)		Article 7(1))
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			Article 7(2), last sentence
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	Article 15(2) point (a)		Article 20(1) and (2)
	Article 15(2) point (b) first sentence		Article 20(2)
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	-		Article 22(2), (3) and (5a)
	Article 15(3) point (b)		Article 22(4)
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	Article 15(3) point (d)		Article 19(2)
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		Article 6(2), third subparagraph, first sentence	Article 27(2)
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		Article 7(1)	Article 33(1)
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