

**COMMISSION IMPLEMENTING REGULATION (EU) No 1035/2011****of 17 October 2011****laying down common requirements for the provision of air navigation services and amending Regulations (EC) No 482/2008 and (EU) No 691/2010****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to 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) <sup>(1)</sup>, and in particular Articles 4, 6 and 7 thereof,Having regard to Regulation (EC) No 216/2008 of the European Parliament and of the Council of 20 February 2008 on common rules in the field of civil aviation and establishing a European Aviation Safety Agency, and repealing Council Directive 91/670/EEC, Regulation (EC) No 1592/2002 and Directive 2004/36/EC <sup>(2)</sup>, and in particular Article 8b(6) thereof,

Whereas:

- (1) Pursuant to Regulation (EC) No 216/2008, the Commission, assisted by the European Aviation Safety Agency (the Agency), is required to adopt implementing rules for the provision of air traffic management and air navigation services (ATM/ANS) throughout the Union. Article 8b(6) of that Regulation requires those implementing rules to be based on the regulations adopted under Article 5(3) of 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) <sup>(3)</sup>.
- (2) The provision of air navigation services within the Union should be subject to certification by Member States or the Agency. Air navigation service providers which comply with the common requirements should be granted a certificate in accordance with Article 7 of Regulation (EC) No 550/2004 and Article 8b(2) of Regulation (EC) No 216/2008.
- (3) The application of the common requirements laid down pursuant to Article 6 of Regulation (EC) No 550/2004 and Article 8b of Regulation (EC) No 216/2008 should be without prejudice to Member States' sovereignty over their airspace and to the requirements of the Member States relating to public order, public security and defence matters, as set out in Article 13 of Regulation

(EC) No 549/2004. The common requirements should not cover military operations and training, as provided for in Article 1(2) of Regulation (EC) No 549/2004 and Article 1(2) of Regulation (EC) No 216/2008.

- (4) The definition of common requirements for the provision of air navigation services should take due account of the legal status of air navigation service providers in the Member States. Furthermore, when an organisation pursues activities other than the provision of air navigation services, the common requirements should not apply to such other activities or to resources allocated to activities outside the provision of air navigation services, unless provision is made to the contrary.
- (5) The application of the common requirements to air navigation service providers should be proportionate to the risks linked with the specific features of each activity such as the number and/or the nature and characteristics of processed movements. Should certain air navigation service providers elect not to avail themselves of the opportunity to provide cross-border services within the single European sky, a competent authority should be entitled to allow those providers to comply commensurately with, respectively, certain general requirements for the provision of air navigation services and certain specific requirements for the provision of air traffic services. Consequently, the conditions attached to the certificate should reflect the nature and the scope of the derogation.
- (6) In order to ensure the proper functioning of the certification scheme, Member States should provide the Commission and the Agency with all relevant information on the derogations granted by their competent authority in the context of their annual reports.
- (7) The different types of air navigation service activities are not necessarily subject to the same requirements. It is therefore necessary to adjust common requirements to the special features of each type of activity.
- (8) The onus of proving compliance with the applicable common requirements should lie with the air navigation service provider, for the period of validity of the certificate and for all the services covered by it.
- (9) In order to ensure the effective application of the common requirements, a system of regular supervision and inspection of compliance with those common requirements and with the conditions specified in the certificate should be established. The competent

<sup>(1)</sup> OJ L 96, 31.3.2004, p. 10.

<sup>(2)</sup> OJ L 79, 19.3.2008, p. 1.

<sup>(3)</sup> OJ L 96, 31.3.2004, p. 1.

authority should examine the suitability of a provider prior to issuing a certificate and should assess the ongoing compliance of the air navigation service providers it has certified on a yearly basis. Consequently, it should establish and update annually an indicative inspection programme covering all the providers it has certified, on the basis of an assessment of the risks. That programme should allow the inspection of all relevant parts of the air navigation service providers within a reasonable time frame. When assessing the compliance of designated providers of air traffic services and meteorological services, the competent authority should be entitled to check relevant requirements stemming from the international obligations on the Member State in question.

- (10) Peer reviews of national supervisory authorities could further a common approach to the supervision of air navigation service providers throughout the Union. The Commission, in cooperation with the Member States and the Agency, may arrange these peer reviews, which should be coordinated with the activities undertaken within the framework of Articles 24 and 54 of Regulation (EC) No 216/2008 and any other international monitoring and oversight programmes. This would avoid duplication of work. In order to allow the exchange of experience and best practice during a peer review, the experts should preferably be from a competent authority.
- (11) Eurocontrol has developed Safety Regulatory Requirements (ESARRs) which have been of the highest importance for the safe provision of air traffic services. In accordance with Regulation (EC) No 550/2004, the Commission should identify and adopt the relevant provisions of ESARRs in Union regulations. The ESARRs incorporated in Commission Regulation (EC) No 2096/2005 of 20 December 2005 laying down common requirements for the provision of air navigation services<sup>(1)</sup> form the basis of these implementing rules.
- (12) When adopting Regulation (EC) No 2096/2005, the Commission concluded that it was not appropriate to repeat the ESARR 2 provisions on reporting and assessment of safety occurrences in ATM, which are covered by Regulation (EU) No 996/2010 of the European Parliament and the Council of 20 October 2010 on the investigation and prevention of accidents and incidents in civil aviation and repealing Directive 94/56/EC<sup>(2)</sup> and by Directive 2003/42/EC of the European Parliament and of the Council of 13 June 2003 on occurrence reporting in civil aviation<sup>(3)</sup>. However, new provisions on safety occurrences should be introduced in order to require a competent authority, as defined by this Regulation, to check whether providers of air traffic services, and also providers of communication, navigation or surveillance services, meet the arrangements required to cover the reporting and assessment of such occurrences.
- (13) It should be recognised in particular that, firstly, safety management is that function of air navigation services which ensures that all safety risks have been identified, assessed and satisfactorily mitigated, and that, secondly, a formal and systematic approach to safety management and management systems, towards a total system approach, will maximise safety benefits in a visible and traceable way. The Agency should further evaluate the safety requirements of this Regulation and integrate them into a common regulatory structure for civil aviation safety.
- (14) Until the Agency has drawn up the implementing measures transposing the relevant standards of the International Civil Aviation Organisation (ICAO) into Union implementing measures, acceptable means of compliance, certification specifications and guidance material, air navigation service providers should operate in compliance with the relevant ICAO standards. With a view to facilitating the cross-border provision of air navigation services, and until the finalisation of the work of the Agency to draw up the relevant measures transposing the ICAO standards, the Member States, the Commission and the Agency, acting in close cooperation with Eurocontrol where relevant, should work towards minimising the differences notified by Member States in the application of ICAO standards in the field of air navigation services in order to reach a common set of standards between Member States within the single European sky.
- (15) Different national arrangements as to liability should not prevent air navigation service providers from entering into agreements on the cross-border provision of services, once the air navigation service providers have set up arrangements to cover losses for damages arising from liabilities under the applicable law. The method employed should comply with the requirements of national law. Member States which allow the provision of air navigation services in all or part of the airspace under their responsibility without certification in accordance with Regulation (EC) No 550/2004 should cover the liabilities of those air navigation service providers.
- (16) The Agency should further evaluate the provisions of this Regulation, in particular those related to the safety assessment of changes to the provision of air navigation services by the certified organisation and engineering and technical personnel, and issue an opinion to adapt them towards a total system approach, taking into account the integration of these provisions into a future common regulatory structure for civil aviation safety and the experience gained by stakeholders and competent authorities in the field of safety oversight.

<sup>(1)</sup> OJ L 335, 21.12.2005, p. 13.

<sup>(2)</sup> OJ L 295, 12.11.2010, p. 35.

<sup>(3)</sup> OJ L 167, 4.7.2003, p. 23.

- (17) 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) <sup>(1)</sup> requires that specific functions called network functions are to be set up to allow optimum use of airspace and scarce resources, while allowing users maximum access to airspace as well as the ability to operate preferred trajectories. As provided for in Regulation (EC) No 551/2004, Commission Regulation (EU) No 677/2011 of 7 July 2011 laying down detailed rules for the implementation of air traffic management (ATM) network functions and amending Regulation (EU) No 691/2010 <sup>(2)</sup> lays down the rights, obligations and responsibilities of the entity involved in the provision of those functions.
- (18) For the safe execution of certain network functions, the entity involved is subject to certain requirements. These requirements aim to ensure that the entity or organisation operates in a safe manner and they are laid down in Annex VI Regulation (EU) No 677/2011. These are organisation safety requirements which are very similar to the general requirements for the provision of air navigation services laid down in Annex I to this Regulation but adapted to the safety responsibilities of the network functions.
- (19) Regulation (EC) No 2096/2005 should therefore be repealed.
- (20) Commission Regulation (EC) No 482/2008 of 30 May 2008 establishing a software safety assurance system to be implemented by air navigation service providers and amending Annex II to Regulation (EC) No 2096/2005 <sup>(3)</sup> and Commission Regulation (EU) No 691/2010 of 29 July 2010 laying down a performance scheme for air navigation services and network functions and amending Regulation (EC) No 2096/2005 laying down common requirements for the provision of air navigation services <sup>(4)</sup> should be amended in order to be adapted to this Regulation.
- (21) The measures provided for in this Regulation are in accordance with the opinion of the Single Sky Committee established by Article 5 of Regulation (EC) No 549/2004,

HAS ADOPTED THIS REGULATION:

#### Article 1

##### Subject matter and scope

This Regulation lays down the common requirements for the provision of air navigation services.

<sup>(1)</sup> OJ L 96, 31.3.2004, p. 20.

<sup>(2)</sup> OJ L 185, 15.7.2011, p. 1.

<sup>(3)</sup> OJ L 141, 31.5.2008, p. 5.

<sup>(4)</sup> OJ L 201, 3.8.2010, p. 1.

However, unless Annex I or II makes provision to the contrary, those common requirements shall not apply to:

- (a) activities other than the provision of air navigation services by a provider of such services;
- (b) resources allocated to activities outside the provision of air navigation services.

#### Article 2

##### Definitions

For the purposes of this Regulation, the definitions in Article 2 of Regulation (EC) No 549/2004 and Article 3 of Regulation (EC) No 216/2008 apply. However, the definition of 'certificate' in Article 2(15) of Regulation (EC) No 549/2004 does not apply.

The following definitions also apply:

- (1) 'aerial work' means an aircraft operation in which an aircraft is used for specialised services such as agriculture, construction, photography, surveying, observation and patrol, search and rescue or aerial advertisement;
- (2) 'commercial air transport' means any aircraft operation involving the transport of passengers, cargo or mail for remuneration or hire;
- (3) 'functional system' means a combination of systems, procedures and human resources organised to perform a function within the context of ATM;
- (4) 'general aviation' means any civil aircraft operation other than aerial work or commercial air transport;
- (5) 'national supervisory authority' means the body or bodies nominated or established by Member States as their national supervisory authority pursuant to Article 4(1) of Regulation (EC) No 549/2004;
- (6) 'hazard' means any condition, event, or circumstance which could induce an accident;
- (7) 'organisation' means an entity providing air navigation services;
- (8) 'operating organisation' means an organisation responsible for the provision of engineering and technical services supporting air traffic, communication, navigation or surveillance services;
- (9) 'risk' means the combination of the overall probability, or frequency of occurrence of a harmful effect induced by a hazard and the severity of that effect;

- (10) 'safety assurance' means all planned and systematic actions necessary to provide adequate confidence that a product, a service, an organisation or a functional system achieves acceptable or tolerable safety;
- (11) 'safety objective' means a qualitative or quantitative statement that defines the maximum frequency or probability at which a hazard can be expected to occur;
- (12) 'safety requirement' means a risk-mitigation means, defined from the risk-mitigation strategy that achieves a particular safety objective, including organisational, operational, procedural, functional, performance, and interoperability requirements or environment characteristics;
- (13) 'services' means either an air navigation service or a bundle of such services;
- (14) 'pan-European air navigation service' means an air navigation service which is designed and established for users within most or all Member States and which may also extend beyond the airspace of the territory to which the Treaty applies.
- (15) 'air navigation service provider' means any public or private entity providing ANS for general air traffic, including an organisation having applied for a certificate to provide such services.

#### Article 3

##### Competent authority for certification

1. For the purpose of this Regulation, the competent authority for the certification of air navigation service providers shall be:
- (a) for organisations having their principal place of operation and, if any, their registered office located in a Member State, the national supervisory authority nominated or established by that Member State;
- (b) for organisations providing air navigation services in the airspace of the territory to which the Treaty applies and having their principal place of operation and, if any, their registered office located outside the territory subject to the provisions of the Treaty, the Agency;
- (c) for organisations providing pan-European air navigation services in the airspace of the territory to which the Treaty applies, the Agency.
2. The competent authority for safety oversight shall be the authority determined in accordance with Article 3 of Commission Implementing Regulation (EU) No 1034/2011 <sup>(1)</sup>.

<sup>(1)</sup> See page 15 of this Official Journal.

#### Article 4

##### Granting of certificates

1. In order to obtain the certificate necessary to provide air navigation services, and without prejudice to Article 7(5) of Regulation (EC) No 550/2004, organisations shall comply with:
- (a) the general requirements for the provision of air navigation services set out in Annex I;
- (b) the additional specific requirements set out in Annexes II to V according to the type of service they provide.
2. A competent authority shall verify an organisation's compliance with the common requirements before issuing a certificate to it.
3. An organisation shall comply with the common requirements no later than at the time at which the certificate is issued pursuant to:
- (a) Article 7 of Regulation (EC) No 550/2004;
- (b) Article 8b(2) and Article 22a(b) and (c) of Regulation (EC) No 216/2008.

#### Article 5

##### Derogations

1. By way of derogation from Article 4(1), certain air navigation service providers may elect not to avail themselves of the opportunity to provide cross-border services and may waive the right to mutual recognition within the single European sky.
- They may, in those circumstances, apply for a certificate which is limited to the airspace under the responsibility of the Member State referred to in Article 7(2) of Regulation (EC) No 550/2004.
2. In order to make an application as referred to in paragraph 1, a provider of air traffic services shall provide services or plan to provide them only with respect to one or more of the following categories:
- (a) aerial work;
- (b) general aviation;
- (c) commercial air transport limited to aircraft with less than 10 tonnes of maximum take-off mass or less than 20 passenger seats;

(d) commercial air transport with less than 10 000 movements per year, regardless of the maximum take-off mass and the number of passenger seats; 'movements' being counted as the sum of take-offs and landings and calculated as an average over the previous three years.

In order to make such an application, an air navigation service provider other than a provider of air traffic services shall have a gross annual turnover of EUR 1 000 000 or less in relation to the services it provides or plans to provide.

Where, owing to objective practical reasons, an air navigation service provider is unable to provide evidence that it meets those qualifying criteria, the competent authority may accept analogous figures or forecasts in relation to the ceilings defined in the first and the second subparagraphs.

When submitting such an application, the air navigation service provider shall submit to the competent authority, at the same time the relevant evidence regarding the qualifying criteria.

3. The competent authority may grant specific derogations to applicants who fulfil the qualifying criteria of paragraph 1, commensurately with their contribution to ATM in the airspace under the responsibility of the Member State concerned.

Those derogations may relate only to the requirements set out in Annex I.

However, no derogation shall be granted for the following requirements:

- (a) technical and operational competence and capability (point 1);
- (b) safety management (point 3.1);
- (c) human resources (point 5);
- (d) open and transparent provision of air navigation services (point 8.1).

4. In addition to the derogations provided for in paragraph 3, the competent authority may grant derogations to applicants who provide aerodrome flight information services by operating regularly not more than one working position at any aerodrome. It shall do so commensurately with the applicants' contribution to ATM in the airspace under the responsibility of the Member State concerned.

Those derogations may relate only to the following requirements of point 3 of Annex II:

- (a) safety management responsibility and external services and supplies (point 3.1.2(b) and (e));
- (b) safety surveys (point 3.1.3(a));

(c) safety requirements for risk assessment and mitigation with regard to changes (point 3.2).

5. No derogations shall be granted from the requirements in Annexes III, IV or V.

6. In accordance with Annex II of Regulation (EC) No 550/2004, the competent authority shall:

- (a) specify the nature and the scope of the derogation in the conditions attached to the certificate by indicating its legal basis;
- (b) limit the validity of the certificate in time, where considered necessary for oversight purposes;
- (c) monitor whether the air navigation service providers continue to qualify for the derogation.

#### Article 6

#### Demonstration of compliance

1. Organisations shall provide all the relevant evidence to demonstrate compliance with the applicable common requirements at the request of the competent authority. Organisations may make full use of existing data.

2. A certified organisation shall notify the competent authority of planned changes to its provision of air navigation services which may affect its compliance with the applicable common requirements or with the conditions attached to the certificate, where applicable.

3. Where a certified organisation no longer complies with the applicable common requirements or, where applicable, with the conditions attached to the certificate, the competent authority shall, within one month of the date of discovering the non-compliance, require the organisation to take corrective action.

That decision shall immediately be notified to the relevant organisation.

The competent authority shall check that the corrective action has been implemented before notifying its approval to the relevant organisation.

Where the competent authority considers that corrective action has not been properly implemented within the timetable agreed with the organisation, it shall take appropriate enforcement measures as provided for in Article 7(7) of Regulation (EC) No 550/2004 and Article 10, Article 22a(d), and Articles 25 and 68 of Regulation (EC) No 216/2008, while taking into account the need to ensure the continuity of air navigation services.

*Article 7***Facilitation of compliance monitoring**

Organisations shall facilitate inspections and surveys by the competent authority or by a qualified entity acting on the latter's behalf, including site visits and visits without prior notice.

The authorised persons shall be empowered to perform the following acts:

- (a) to examine the relevant records, data, procedures and any other material relevant to the provision of air navigation services;
- (b) to take copies of or extracts from such records, data, procedures and other material;
- (c) to ask for an oral explanation on site;
- (d) to enter relevant premises, lands or means of transport.

Such inspections and surveys, when conducted by a competent authority or by a qualified entity acting on their behalf, shall be carried out in compliance with the legal provisions of the Member State in which they are to be undertaken.

*Article 8***Ongoing compliance**

The competent authority shall, on the basis of the evidence at its disposal, monitor annually the ongoing compliance of the organisations which it has certified.

To that end, the competent authority shall establish and update annually an indicative inspection programme which covers all the providers it has certified and which is based on an assessment of the risks associated with the different operations constituting the air navigation services provided. It shall consult the organisation concerned as well as any other competent authority concerned, if appropriate, before establishing such a programme.

The programme shall indicate the envisaged interval of the inspections of the different sites.

*Article 9***Safety regulation of engineering and technical personnel**

With regard to the provision of air traffic, communication, navigation or surveillance services, the competent authority or any other authority designated by a Member State to fulfil this task shall:

- (a) issue appropriate safety rules for engineering and technical personnel who undertake operational safety-related tasks;
- (b) ensure adequate and appropriate safety oversight of the engineering and technical personnel assigned by any operating organisation to undertake operational safety-related tasks;
- (c) on reasonable grounds and after due enquiry, take appropriate action in respect of the operating organisation and/or its technical and engineering personnel who do not comply with the requirements of point 3.3 of Annex II;
- (d) verify that appropriate methods are in place to ensure that third parties assigned to operational safety-related tasks comply with the requirements of point 3.3 of Annex II.

*Article 10***Peer review procedure**

1. The Commission, acting in cooperation with the Member States and the Agency may arrange peer reviews of national supervisory authorities in accordance with paragraphs 2 to 6.

2. A peer review shall be carried out by a team of national experts and, where appropriate, observers from the Agency.

A team shall be comprised of experts coming from at least three different Member States and the Agency.

Experts shall not participate in peer reviews in the Member State where they are employed.

The Commission shall establish and maintain a pool of national experts, designated by Member States, which shall cover all aspects of the common requirements as listed in Article 6 of Regulation (EC) No 550/2004.

3. Not less than three months before a peer review, the Commission shall inform the Member State and the national supervisory authority concerned of the peer review, the date on which it is scheduled to take place and the identity of the experts taking part in it.

The Member State whose national supervisory authority is subject to review shall approve the team of experts before it may carry out the review.

4. Within a period of three months from the date of the review, the review team shall draw up, by consensus, a report which may contain recommendations.

The Commission shall convene a meeting with the Agency, the experts and the national supervisory authority to discuss that report.

5. The Commission shall forward the report to the Member State concerned.

The Member State may, within three months from the date of receipt of the report, present its observations.

Those observations shall include, where relevant, the measures which the Member State has taken or intends to take to respond to the review within a given timescale.

Unless otherwise agreed with the Member State concerned, the report and the follow-up shall not be published.

6. The Commission shall inform the Member States through the Single Sky Committee of the main findings of these reviews on an annual basis.

#### Article 11

##### Transitional provisions

1. Air navigation service providers holding a certificate issued in accordance with Regulation (EC) No 2096/2005 on the date of entry into force of this Regulation shall be deemed to hold a certificate issued in accordance with this Regulation.

2. Applicants for an air navigation service providers' certificate which submitted their application before the date of entry into force of this Regulation and were not already issued with a certificate on that date shall show compliance with the provisions of this Regulation before the certificate is issued.

3. Where organisations, for which the competent authority will be the Agency in accordance with Article 3, have applied to a national supervisory authority of a Member State for the issue of a certificate before the date entry into force of this Regulation, the national supervisory authority shall finalise the certification process in coordination with the Agency and transfer the file to the Agency upon the issue of the certificate.

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

Done at Brussels, 17 October 2011.

#### Article 12

##### Repeal

Regulation (EC) No 2096/2005 is repealed.

#### Article 13

##### Amendment to Regulation (EC) No 482/2008

Regulation (EC) No 482/2008 is amended as follows:

- (1) in Article 4(5), the reference to 'Regulation (EC) No 2096/2005' is replaced by a reference to 'Commission Implementing Regulation (EU) No 1035/2011 (\*)'.

(\*) OJ L 271, 18.10.2011, p. 23';

- (2) Article 6 is deleted;

- (3) in Annex I, in points 1 and 2, the reference to 'Regulation (EC) No 2096/2005' is replaced by a reference to 'Implementing Regulation (EU) No 1035/2011'.

#### Article 14

##### Amendment to Regulation (EU) No 691/2010

In Regulation (EU) No 691/2010, Article 25 is deleted.

#### Article 15

##### Entry into force

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

For the Commission

The President

José Manuel BARROSO

## ANNEX I

**General requirements for the provision of air navigation services**

## 1. TECHNICAL AND OPERATIONAL COMPETENCE AND CAPABILITY

Air navigation service providers shall be able to provide their services in a safe, efficient, continuous and sustainable manner consistent with any reasonable level of overall demand for a given airspace. To this end, they shall maintain adequate technical and operational capacity and expertise.

## 2. ORGANISATIONAL STRUCTURE AND MANAGEMENT

2.1. **Organisational structure**

Air navigation service providers shall set up and manage their organisation according to a structure that supports the safe, efficient and continuous provision of air navigation services.

The organisational structure shall define:

- (a) the authority, duties and responsibilities of the nominated post holders, in particular of the management personnel in charge of safety, quality, security, finance and human resources related functions;
- (b) the relationship and reporting lines between different parts and processes of the organisation.

2.2. **Organisational management**2.2.1. *Business plan*

Air navigation service providers shall produce a business plan covering a minimum period of five years. The business plan shall:

- (a) set out the overall aims and goals of the air navigation service provider and its strategy towards achieving them in consistency with any overall longer term plan of the air navigation service provider and with relevant Union requirements for the development of infrastructure or other technology;
- (b) contain appropriate performance targets in terms of safety, capacity, environment and cost-efficiency, as may be applicable.

The information listed in points (a) and (b) shall be consistent with the national or functional airspace block performance plan referred to in Article 11 of Regulation (EC) No 549/2004 and, as far as safety data is concerned, consistent with the State Safety Programme referred to in Standard 2.27.1 of Annex 11 to the Convention on International Civil Aviation, Amendment 47B from 20 July 2009 as applicable.

Air navigation service providers shall produce safety and business justifications for major investment projects including, where relevant, the estimated impact on the appropriate performance targets referred to in point (b) and identifying investments stemming from the legal requirements associated with the implementation of the Single European Sky ATM Research Programme (SESAR).

2.2.2. *Annual plan*

Air navigation service providers shall produce an annual plan covering the forthcoming year which shall specify further the features of the business plan and describe any changes to it.

The annual plan shall cover the following provisions on the level and quality of service, such as the expected level of capacity, safety, environment and cost-efficiency, as may be applicable:

- (a) information on the implementation of new infrastructure or other developments and a statement how they will contribute to improving the performance of the air navigation service provider, including level and quality of services;



- (b) performance indicators consistent with the national or functional airspace block performance plan referred to in Article 11 of Regulation (EC) No 549/2004 against which the performance level and quality of service may be reasonably assessed;
- (c) information on the measures foreseen to mitigate the safety risks identified in the safety plan of the air navigation service provider, including safety indicators to monitor safety risk and, where appropriate, the estimated cost of mitigation measures;
- (d) the air navigation service provider's expected short-term financial position as well as any changes to or impacts on the business plan.

### 2.2.3. *Performance part of the plans*

The air navigation service provider shall make the content of the performance part of the business plan and of the annual plan available to the Commission on request under the conditions set by the competent authority in accordance with national law.

## 3. SAFETY AND QUALITY MANAGEMENT

### 3.1. **Safety management**

Air navigation service providers shall manage the safety of all their services. In doing so, they shall establish formal interfaces with all stakeholders which may influence directly the safety of their services.

Air navigation service providers shall develop procedures for managing safety when introducing new functional systems or changing the existing functional systems.

### 3.2. **Quality management system**

Air navigation service providers shall have in place a quality management system which covers all air navigation services that they provide, according to the following principles.

The quality management system shall:

- (a) define the quality policy in such a way as to meet the needs of different users as closely as possible;
- (b) set up a quality assurance programme that contains procedures designed to verify that all operations are being conducted in accordance with applicable requirements, standards and procedures;
- (c) provide evidence of the functioning of the quality management system by means of manuals and monitoring documents;
- (d) appoint management representatives to monitor compliance with, and adequacy of, procedures to ensure safe and efficient operational practices;
- (e) perform reviews of the quality management system in place and take remedial actions, as appropriate.

An EN ISO 9001 certificate, issued by an appropriately accredited organisation, covering the air navigation services of the provider shall be considered as a sufficient means of compliance. The air navigation service provider shall accept the disclosure of the documentation related to the certification to the competent authority upon the latter's request.

Air navigation service providers may integrate safety, security and quality management systems into their management system.

### 3.3. **Operations manuals**

Air navigation service providers shall provide and keep up-to-date operations manuals relating to the provision of their services for the use and guidance of operations personnel.

They shall ensure that:

- (a) operations manuals contain the instructions and information required by the operations personnel to perform their duties;
- (b) relevant parts of the operations manuals are accessible to the personnel concerned;
- (c) the operations personnel are expeditiously informed of amendments to the operations manual applying to their duties as well as of their entry into force.

#### 4. SECURITY

Air navigation service providers shall establish a security management system to ensure:

- (a) the security of their facilities and personnel so as to prevent unlawful interference with the provision of air navigation services;
- (b) the security of operational data they receive or produce or otherwise employ, so that access to it is restricted only to those authorised.

The security management system shall define:

- (a) the procedures relating to security risk assessment and mitigation, security monitoring and improvement, security reviews and lesson dissemination;
- (b) the means designed to detect security breaches and to alert personnel with appropriate security warnings;
- (c) the means of containing the effects of security breaches and to identify recovery action and mitigation procedures to prevent reoccurrence.

Air navigation service providers shall ensure the security clearance of their personnel, if appropriate, and coordinate with the relevant civil and military authorities to ensure the security of their facilities, personnel and data.

The safety, quality and security management systems may be designed and operated as an integrated management system.

#### 5. HUMAN RESOURCES

Air navigation service providers shall employ appropriately skilled personnel to ensure the provision of air navigation services in a safe, efficient, continuous and sustainable manner. In this context, they shall establish policies for the recruitment and training of personnel.

#### 6. FINANCIAL STRENGTH

##### 6.1. **Economic and financial capacity**

Air navigation service providers shall be able to meet their financial obligations, such as fixed and variable costs of operation or capital investment costs. They shall use an appropriate cost accounting system. They shall demonstrate their abilities through the annual plan as referred to in point 2.2.2 as well as through balance sheets and accounts as practicable under their legal statute.

##### 6.2. **Financial audit**

In accordance with Article 12(2) of Regulation (EC) No 550/2004, air navigation service providers shall demonstrate that they are undergoing an independent audit on a regular basis.

#### 7. LIABILITY AND INSURANCE COVER

Air navigation service providers shall have in place arrangements to cover their liabilities arising from applicable law.

The method employed to provide the cover shall be appropriate to the potential loss and damage in question, taking into account the legal status of the organisation and the level of commercial insurance cover available.

An air navigation service provider which avails itself of the services of another air navigation service provider shall ensure that the agreements cover the allocation of liability between them.

## 8. QUALITY OF SERVICES

### 8.1. **Open and transparent provision of air navigation services**

Air navigation service providers shall provide air navigation services in an open and transparent manner. They shall publish the conditions of access to their services and establish a formal consultation process with the users of air navigation services on a regular basis, either individually or collectively, and at least once a year.

Air navigation service providers shall not discriminate on the grounds of the nationality or identity of the user or the class of users in accordance with applicable Union law.

### 8.2. **Contingency plans**

Air navigation service providers shall have in place contingency plans for all the air navigation services they provide in the case of events which result in significant degradation or interruption of their operations.

## 9. REPORTING REQUIREMENTS

Air navigation service providers shall be able to provide an annual report of their activities to the relevant competent authority.

That annual report shall cover their financial results without prejudice to Article 12 of Regulation (EC) No 550/2004, as well as their operational performance and any other significant activities and developments in particular in the area of safety.

The annual report shall include as a minimum:

- (a) an assessment of the level of performance of air navigation services generated;
- (b) the performance of the air navigation service provider compared to the performance targets established in the business plan referred to in point 2.2.1, reconciling actual performance against the annual plan by using the indicators of performance established in the annual plan;
- (c) provide an explanation for differences with the targets, and identify measures for closing any gaps during the reference period referred to in Article 11 of Regulation (EC) No 549/2004;
- (d) developments in operations and infrastructure;
- (e) the financial results, as long as they are not published separately in accordance with Article 12(1) of Regulation (EC) No 550/2004;
- (f) information about the formal consultation process with the users of its services;
- (g) information about the human resources policy.

Air navigation service providers shall make the content of the annual report available to the Commission and the Agency on request and to the public under the conditions set by the competent authority in accordance with national law.

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## ANNEX II

**Specific requirements for the provision of air traffic services**

## 1. OWNERSHIP

Providers of air traffic services shall notify to the competent authorities referred to in Article 7(2) of Regulation (EC) No 550/2004:

- (a) their legal status, their ownership structure and any arrangements having a significant impact on control over their assets;
- (b) any links with organisations not involved in the provision of air navigation services, including commercial activities in which they are engaged either directly or through related undertakings, which account for more than 1 % of their expected revenue; furthermore, they shall notify any change of any single shareholding which represents 10 % or more of their total shareholding.

Providers of air traffic services shall take all necessary measures to prevent any situation of conflict of interests that could compromise the impartial and objective provision of their services.

## 2. OPEN AND TRANSPARENT PROVISION OF SERVICES

In addition to point 8.1 of Annex I and where a Member State decides to organise the provision of specific air traffic services in a competitive environment, that Member State may take all appropriate measures to ensure that the providers of these specific air traffic services shall neither engage in conduct that would have as its object or effect the prevention, restriction or distortion of competition, nor shall they engage in conduct that amounts to an abuse of a dominant position in accordance with applicable national and Union law.

## 3. SAFETY OF SERVICES

3.1. **Safety management system (SMS)**3.1.1. *General safety requirements*

Providers of air traffic services shall, as an integral part of the management of their services, have in place a safety management system (SMS) which:

- (a) ensures a formalised, explicit and proactive approach to systematic safety management in meeting their safety responsibilities within the provision of their services; operates in respect of all their services and the supporting arrangements under its managerial control; and includes, as its foundation, a statement of safety policy defining the organisation's fundamental approach to managing safety (safety management);
- (b) ensures that everyone involved in the safety aspects of the provision of air traffic services has an individual safety responsibility for their own actions; that managers are responsible for the safety performance of their respective departments or divisions and that the top management of the provider carries an overall safety responsibility (safety responsibility);
- (c) ensures that the achievement of satisfactory safety in air traffic services shall be afforded the highest priority (safety priority);
- (d) ensures that while providing air traffic services, the principal safety objective is to minimise its contribution to the risk of an aircraft accident as far as reasonably practicable (safety objective).

3.1.2. *Requirements for safety achievement*

Within the operation of the SMS, providers of air traffic services shall:

- (a) ensure that personnel are adequately trained and competent for the job they are required to do, in addition to being properly licensed if so required and satisfying applicable medical fitness requirements (competency);
- (b) ensure that a safety management function is identified with organisational responsibility for development and maintenance of the SMS; ensure that this point of responsibility is independent of line management, and accountable directly to the highest organisational level. However, in the case of small organisations where a combination of responsibilities may prevent sufficient independence in this regard, the arrangements for safety assurance shall be supplemented by additional independent means; and ensure that the top management of the service provider organisation is actively involved in ensuring safety management (safety management responsibility);

- (c) ensure that, wherever practicable, quantitative safety levels are derived and are maintained for all functional systems (quantitative safety levels);
- (d) ensure that the SMS is systematically documented in a manner which provides a clear linkage to the organisation's safety policy (SMS documentation);
- (e) ensure adequate justification of the safety of the externally provided services and supplies, having regard to their safety significance within the provision of its services (external services and supplies);
- (f) ensure that risk assessment and mitigation is conducted to an appropriate level to ensure that due consideration is given to all aspects of the provision of ATM (risk assessment and mitigation). As far as changes to the ATM functional system are concerned, point 3.2 shall apply;
- (g) ensure that ATM operational or technical occurrences which are considered to have significant safety implications are investigated immediately, and any necessary corrective action is taken (safety occurrences). They shall also demonstrate that they have implemented the requirements on the reporting and assessment of safety occurrences in accordance with applicable national and Union law.

#### 3.1.3. *Requirements for safety assurance*

Within the operation of the SMS, providers of air traffic services shall ensure that:

- (a) safety surveys are carried out as a matter of routine, to recommend improvements where needed, to provide assurance to managers of the safety of activities within their areas and to confirm compliance with the relevant parts of the SMS (safety surveys);
- (b) methods are in place to detect changes in functional systems or operations which may suggest any element is approaching a point at which acceptable standards of safety can no longer be met, and that corrective action is taken (safety monitoring);
- (c) safety records are maintained throughout the SMS operation as a basis for providing safety assurance to all associated with, responsible for or dependent upon the services provided, and to the competent authority (safety records).

#### 3.1.4. *Requirements for safety promotion*

Within the operation of the SMS, providers of air traffic services shall ensure that:

- (a) all personnel are aware of the potential safety hazards connected with their duties (safety awareness);
- (b) the lessons arising from safety occurrence investigations and other safety activities are disseminated within the organisation at management and operational levels (lesson dissemination);
- (c) all personnel are actively encouraged to propose solutions to identified hazards, and changes are made to improve safety where they appear needed (safety improvement).

### 3.2. **Safety requirements for risk assessment and mitigation with regard to changes**

#### 3.2.1. *Section 1*

Within the operation of the SMS, providers of air traffic services shall ensure that hazard identification as well as risk assessment and mitigation are systematically conducted for any changes to those parts of the ATM functional system and supporting arrangements within their managerial control, in a manner which addresses:

- (a) the complete life cycle of the constituent part of the ATM functional system under consideration, from initial planning and definition to post-implementation operations, maintenance and decommissioning;
- (b) the airborne, ground and, if appropriate, spatial components of the ATM functional system, through cooperation with responsible parties;

- (c) the equipment, procedures and human resources of the ATM functional system, the interactions between these elements and the interactions between the constituent part under consideration and the remainder of the ATM functional system.

### 3.2.2. Section 2

The hazard identification, risk assessment and mitigation processes shall include:

- (a) a determination of the scope, boundaries and interfaces of the constituent part being considered, as well as the identification of the functions that the constituent part is to perform and the environment of operations in which it is intended to operate;
- (b) a determination of the safety objectives to be placed on the constituent part, incorporating:
  - (i) an identification of ATM-related credible hazards and failure conditions, together with their combined effects;
  - (ii) an assessment of the effects they may have on the safety of aircraft, as well as an assessment of the severity of those effects, using the severity classification scheme set out in Section 4;
  - (iii) a determination of their tolerability, in terms of the hazard's maximum probability of occurrence, derived from the severity and the maximum probability of the hazard's effects, in a manner consistent with Section 4;
- (c) the derivation, as appropriate, of a risk mitigation strategy which:
  - (i) specifies the defences to be implemented to protect against the risk-bearing hazards;
  - (ii) includes, as necessary, the development of safety requirements potentially bearing on the constituent part under consideration, or other parts of the ATM functional system, or environment of operations;
  - (iii) presents an assurance of its feasibility and effectiveness;
- (d) verification that all identified safety objectives and safety requirements have been met:
  - (i) prior to its implementation of the change;
  - (ii) during any transition phase into operational service;
  - (iii) during its operational life;
  - (iv) during any transition phase until decommissioning.

### 3.2.3. Section 3

The results, associated rationales and evidence of the risk assessment and mitigation processes, including hazard identification, shall be collated and documented in a manner which ensures that:

- (a) complete arguments are established to demonstrate that the constituent part under consideration, as well as the overall ATM functional system are, and will remain tolerably safe by meeting allocated safety objectives and requirements. This shall include, as appropriate, specifications of any predictive, monitoring or survey techniques being used;
- (b) all safety requirements related to the implementation of a change are traceable to the intended operations/functions.

### 3.2.4. Section 4

Hazard identification and severity assessment

A systematic identification of the hazards shall be conducted. The severity of the effects of hazards in a given environment of operations shall be determined using the classification scheme set out in the following table, while the severity classification shall rely on a specific argument demonstrating the most probable effect of hazards, under the worst-case scenario.

Severity class	Effect on operations
1 (Most severe)	Accident as defined in Article 2 of Regulation (EU) No 996/2010 of the European Parliament and of the Council <sup>(1)</sup> .
2	Serious incident as defined in Article 2 of Regulation (EU) No 996/2010.
3	Major incident associated with the operation of an aircraft, in which the safety of the aircraft may have been compromised, having led to a near collision between aircrafts, with ground or obstacles.
4	Significant incident involving circumstances indicating that an accident, a serious or major incident could have occurred, if the risk had not been managed within safety margins, or if another aircraft had been in the vicinity.
5 (Least severe)	No immediate effect on safety.

<sup>(1)</sup> OJ L 295, 12.11.2010, p. 35.

In order to deduce the effect of a hazard on operations and to determine its severity, the systematic approach/process shall include the effects of hazards on the various elements of the ATM functional system, such as the air crew, the air traffic controllers, the aircraft functional capabilities, the functional capabilities of the ground part of the ATM functional system, and the ability to provide safe air traffic services.

#### Risk classification scheme

Safety objectives based on risk shall be established in terms of the hazard's maximum probability of occurrence, derived both from the severity of its effect, and from the maximum probability of the hazard's effect.

As a necessary complement to the demonstration that established quantitative objectives are met, additional safety management considerations shall be applied so that more safety is added to the ATM system, whenever reasonable.

#### 3.2.5. Section 5

##### Software safety assurance system

Within the operation of the SMS, a provider of air traffic services shall implement a software safety assurance system in accordance with Regulation (EC) No 482/2008.

#### 3.3. Safety requirements for engineering and technical personnel undertaking operational safety related tasks

Providers of air traffic services shall ensure that technical and engineering personnel including personnel of subcontracted operating organisations who operate and maintain ATM equipment approved for their operational use have and maintain sufficient knowledge and understanding of the services they are supporting, of the actual and potential effects of their work on the safety of those services, and of the appropriate working limits to be applied.

With regard to the personnel involved in safety-related tasks including personnel of subcontracted operating organisations, providers of air traffic services shall document the adequacy of the competence of the personnel; the rostering arrangements in place to ensure sufficient capacity and continuity of service; the personnel qualification schemes and policy, the personnel training policy, training plans and records as well as arrangements for the supervision of non-qualified personnel. They shall have procedures in place for cases where the physical or mental condition of the personnel is in doubt.

Providers of air traffic services shall maintain a register of information on the numbers, status and deployment of the personnel involved in safety related tasks.

That register shall:

- (a) identify the accountable managers for safety-related functions;
- (b) record the relevant qualifications of technical and operational personnel, against required skills and competence requirements;
- (c) specify the locations and duties to which technical and operational personnel are assigned, including any rostering methodology.

4. WORKING METHODS AND OPERATING PROCEDURES

Providers of air traffic services shall be able to demonstrate that their working methods and operating procedures are compliant with the standards in the following annexes to the Convention on International Civil Aviation as far as they are relevant for the provision of air traffic services in the airspace concerned:

- (a) Annex 2 on rules of the air in its 10th edition of July 2005, including all amendments up to No 42;
  - (b) Annex 10 on aeronautical telecommunications, Volume II on communication procedures including those with PANS Status in its sixth edition of October 2001, including all amendments up to No 85;
  - (c) Annex 11 on air traffic services in its 13th edition of July 2001, including all amendments up to No 47-B.
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## ANNEX III

**Specific requirements for the provision of meteorological services**

## 1. TECHNICAL AND OPERATIONAL COMPETENCE AND CAPABILITY

Providers of meteorological services shall ensure that the meteorological information, necessary for the performance of their respective functions and in a form suitable for users, is made available to:

- (a) operators and flight crew members for pre-flight and in-flight planning;
- (b) providers of air traffic services and flight information services;
- (c) search and rescue services units;
- (d) aerodromes.

Providers of meteorological services shall confirm the level of attainable accuracy of the information distributed for operations, including the source of such information, whilst also ensuring that such information is distributed in a sufficiently timely manner, and updated as required.

## 2. WORKING METHODS AND OPERATING PROCEDURES

Providers of meteorological services shall be able to demonstrate that their working methods and operating procedures are compliant with the standards in the following annexes to the Convention on International Civil Aviation as far as they are relevant for the provision of meteorological services in the airspace concerned:

- (a) Annex 3 on meteorological service for international air navigation in its 17th edition of July 2010, including all amendments up to No 75;
  - (b) Annex 11 on air traffic services in its 13th edition of July 2001, including all amendments up to No 47-B;
  - (c) Annex 14 on aerodromes in the following versions:
    - (i) Volume I on aerodrome design and operations in its 5th edition of July 2009, including all amendments up to No 10-B;
    - (ii) Volume II on heliports in its 3rd edition of July 2009, including all amendments up to No 4.
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## ANNEX IV

**Specific requirements for the provision of aeronautical information services**

## 1. TECHNICAL AND OPERATIONAL COMPETENCE AND CAPABILITY

Providers of aeronautical information services shall ensure that information and data is available for operations in a form suitable for:

- (a) flight operating personnel, including flight crew, as well as flight planning, flight management systems and flight simulators;
- (b) providers of air traffic services which are responsible for flight information services, aerodrome flight information services and the provision of pre-flight information.

Providers of aeronautical information services shall ensure the integrity of data and confirm the level of accuracy of the information distributed for operations, including the source of such information, before such information is distributed.

## 2. WORKING METHODS AND OPERATING PROCEDURES

Providers of aeronautical information services shall be able to demonstrate that their working methods and operating procedures are compliant with the standards in:

- (a) Commission Regulation (EU) No 73/2010 <sup>(1)</sup>;
- (b) the following Annexes to the Convention on International Civil Aviation as far as they are relevant for the provision of aeronautical information services in the airspace concerned:
  - (i) Annex 3 on meteorological service for international air navigation in its 17th edition of July 2010, including all amendments up to No 75;
  - (ii) Annex 4 on aeronautical charts in its 11th edition of July 2009, including all amendments up to No 56;
  - (iii) without prejudice to Regulation (EU) No 73/2010, Annex 15 on aeronautical information services in its 13th edition of July 2010, including all amendments up to No 36.

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<sup>(1)</sup> OJ L 23, 27.1.2010, p. 6.

## ANNEX V

**Specific requirements for the provision of communication, navigation or surveillance services****1. TECHNICAL AND OPERATIONAL COMPETENCE AND CAPABILITY**

Providers of communication, navigation or surveillance services shall ensure the availability, continuity, accuracy and integrity of their services.

Providers of communication, navigation or surveillance services shall confirm the quality level of the services they are providing and shall demonstrate that their equipment is regularly maintained and where required calibrated.

**2. SAFETY OF SERVICES**

Providers of communication, navigation or surveillance services shall comply with the requirements of point 3 of Annex II on the safety of services.

**3. WORKING METHODS AND OPERATING PROCEDURES**

Providers of communication, navigation or surveillance services shall be able to demonstrate that their working methods and operating procedures are compliant with the standards of Annex 10 on aeronautical telecommunications to the Convention on International Civil Aviation in the following versions as far as they are relevant for the provision of communication, navigation or surveillance services in the airspace concerned:

- (a) Volume I on radio navigation aids in its sixth edition of July 2006, including all amendments up to No 85;
  - (b) Volume II on communication procedures including those with PANS status in its sixth edition of October 2001, including all amendments up to No 85;
  - (c) Volume III on communications systems in its second edition of July 2007 including all amendments up to No 85;
  - (d) Volume IV on surveillance radar and collision avoidance systems in its fourth edition of July 2007, including all amendments up to No 85;
  - (e) Volume V on aeronautical radio frequency spectrum utilisation in its second edition of July 2001, including all amendments up to No 85.
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