



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, XXX

Draft

COMMISSION REGULATION (EU) No .../2010

of [...]

laying down common requirements for the provision of air navigation services, as regards working methods and operating procedures

(Text with EEA relevance)

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THE EUROPEAN COMMISSION,

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

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/EC¹ as amended by Regulation (EC) No 1108/2009 of the European Parliament and of the Council of 21 October 2009 in the field of aerodromes, air traffic management and air navigation services and repealing Directive 2006/23/EC², and in particular Article 8b thereof,

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 sky³ (the service provision Regulation) as amended by Regulation (EC) No 1070/2009 of the European Parliament and of the Council of 21 October 2009 in order to improve the performance and sustainability of the European aviation system⁴, and in particular Articles 4 and 6 thereof,

Whereas:

- (1) Pursuant to Regulation (EC) No 216/2008, the Commission, assisted by the European Aviation Safety Agency (hereinafter referred to as ‘the Agency’), is required to adopt implementing rules for the provision of air navigation services throughout the Union. Article 8b of Regulation 216/2008 requires these implementing rules to be based on the regulations adopted under the Single European Sky I. This regulation is based on Regulation (EC) No 2096/2005 of 20 December 2005 laying down common requirements for the provision of air navigation services⁵.
- (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

¹ OJ L 79, 19.3.2008, p. 1.

² OJ L 309, 24.11.2009, p.51.

³ OJ L 96, 31.3.2004, p. 10.

⁴ OJ L 300, 14.11.2009, p. 34.

⁵ OJ L 335, 21.12.2005, p. 13.

comply with the common requirements should receive 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 of the European Parliament and of the Council of 10 March 2004 laying down the framework for the creation of the single European sky⁶ (the framework Regulation) as amended by Regulation (EC) No 1070/2009. The common requirements do 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 to be laid down pursuant to Article 6 of Regulation (EC) No 550/2004 and to Article 8b(6) of Regulation (EC) No 216/2008 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 common requirements to air navigation service providers should be proportionate to the risks linked with the specific features of each service 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 services are not necessarily subject to the same requirements. It is therefore necessary to adjust common requirements to the special features of each type of service.
- (8) The onus of proving compliance should lie with the air navigation service providers, for the period of validity of the certificate and for all the services covered.
- (9) In order to ensure the effective application of common requirements, a system of regular supervision and inspection of compliance with those common requirements

⁶ OJ L 96, 31.3.2004, p. 1.

and with the conditions specified in the certificate should be established. The competent 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. The 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 international obligations on the Member State in question.

- (10) Without prejudice to Articles 24 and 54 of Regulation (EC) No 216/2008, peer reviews of national supervisory authorities could further a common approach to the supervision of air navigation service providers throughout the Community. 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 will avoid duplication of work. In order to allow the exchange of experience and best practice during a peer review, the experts should preferably originate from a competent authority or a qualified entity.
- (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 transposed ESARRs in Regulation (EC) No 2096/2005 have been the basis for 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 Council Directive 94/56/EC of 21 November 1994 establishing the fundamental principles governing the investigation of civil accidents and incidents⁷ and by Directive 2003/42/EC of the European Parliament and of the Council of 13 June 2003 on occurrence reporting in civil aviation⁸. However, new provisions on safety occurrences should be introduced to require a competent authority 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, first, safety management is that function of air traffic 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

⁷ OJ L 319, 12.12.1994, p. 14.

⁸ OJ L 167, 4.7.2003, p. 23.

evaluate the safety requirements of this regulation and integrate them into a common regulatory structure for civil aviation safety.

- (14) Until the Agency has developed the implementing measures transposing the relevant ICAO standards 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 services, and until the finalisation of the work of the Agency to transpose the ICAO standards into the relevant measures, the Member States, and 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 an air navigation service provider from entering into agreements on the cross-border provision of services, once they have set up arrangements to cover losses for damages arising from liabilities under the applicable law. The method employed should follow national legal requirements. 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 providers.
- (16) The Agency should further evaluate the provisions of this Regulation, in particular those related to the safety assessment of changes 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 the common regulatory structure for civil aviation safety and the experience gained by stakeholders and competent authorities in the field of safety oversight.
- (17) 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. However, unless Annex I or II makes provision to the contrary, those common requirements do not apply to:

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

Article 2
Definitions

1. For the purposes of this Regulation the definitions established by Regulation (EC) No 216/2008 and Regulation (EC) No 549/2004 shall apply, except the definition in Article 2(15) of Regulation 549/2004.

2. In addition to the definitions referred to in paragraph 1, the following definitions shall apply:

- (a) ‘aerial work’ shall mean 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;
- (b) ‘commercial air transport’ shall mean any aircraft operation involving the transport of passengers, cargo or mail for remuneration or hire;
- (c) ‘functional system’ shall mean a combination of systems, procedures and human resources organised to perform a function within the context of ATM;
- (d) ‘general aviation’ shall mean any civil aircraft operation other than commercial air transport or aerial work;
- (e) ‘national supervisory authority’ shall mean the body or bodies nominated or established by Member States as their national authority pursuant to Article 4 of Regulation (EC) No 549/2004;
- (f) ‘hazard’ shall mean any condition, event, or circumstance which could induce an accident;
- (g) ‘operating organisation’ shall mean an organisation responsible for the provision of engineering and technical services supporting air traffic, communication, navigation or surveillance services;
- (h) ‘risk’ shall mean the combination of the overall probability, or frequency of occurrence of a harmful effect induced by a hazard and the severity of that effect;
- (i) ‘safety assurance’ shall mean all planned and systematic actions necessary to afford adequate confidence that a product, a service, an organisation or a functional system achieves acceptable or tolerable safety;
- (j) ‘safety objective’ shall mean a qualitative or quantitative statement that defines the maximum frequency or probability at which a hazard can be expected to occur;
- (k) ‘safety requirement’ shall mean 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;
- (l) ‘services’ shall mean either an air navigation service or a bundle of air navigation services;

(m) ‘Pan-European service’ shall mean a service which is designed and established for users within most or all Member States.

3. ‘Air navigation service provider’ shall be understood to include an organisation having applied for a certificate to provide such services.

Article 3 **Competent authority**

For the purpose of this Regulation, the competent authority shall be:

- (a) for air navigation service providers having their principal place of operation and, if any, its registered office located in a Member State, the national supervisory authority nominated or established by that Member State;
- (b) for air navigation service providers offering services within a Functional Airspace Block (FAB) where under the agreement between States the responsibilities for safety oversight have been allocated differently from paragraph (a), the national supervisory authority(ies) nominated or established under that agreement;
- (c) for air navigation service providers providing services in the airspace of the territory to which the Treaty applies and having their principal place of operation and, if any, its registered office located outside the territory subject to the provisions of the treaty, the Agency;
- (d) for air navigation service providers providing Pan-European services, the Agency.

Article 4 **Granting of certificates**

1. In order to obtain the certificate necessary to provide air navigation services, air navigation service providers shall comply with the general common requirements set out in Annex I as well as with the specific additional requirements set out in Annexes II to V to this Regulation according to the type of service they provide.

2. A competent authority shall verify an air navigation service provider’s compliance with the common requirements before issuing a certificate to that provider.

3. An air navigation service provider shall comply with the common requirements no later than the time at which the certificate is issued pursuant to Article 7 of Regulation (EC) No 550/2004, and to Articles 8b(2), 22a(b) and 22a(c) of Regulation (EC) No 216/2008.

Article 5
Derogations

1. By way of derogation from the provisions of 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.

In order to make such an application, 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) general aviation;
- (b) aerial work;
- (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 criteria, a competent authority may accept analogous figures or forecasts in relation to the ceilings defined in the third and fourth subparagraphs.

When presenting such an application, an air navigation service provider shall submit to the competent authority, simultaneously, the relevant evidence regarding the qualifying criteria.

2. A competent authority may grant specific derogations to applicants who fulfil the criteria of paragraph 1, commensurately with their contribution to air traffic management in the airspace under the responsibility of the Member State.

Those derogations may relate only to the requirements of Annex I, subject to the following exceptions:

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

3. In addition to the derogations referred to in paragraph 2, a 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 air traffic management in the airspace under the responsibility of the Member State.

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

- (a) safety management responsibility as well as external services and supplies (under part 3.1.2);
 - (b) safety surveys (under part 3.1.3);
 - (c) safety requirements for risk assessment and mitigation with regard to changes (part 3.2).
4. No derogations shall be granted from the requirements contained in Annexes III, IV or V.
5. In conformity with Annex II of Regulation (EC) No 550/2004, a 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; and
 - (c) monitor whether the air navigation service providers continue to qualify for the derogation.

Article 6 **Demonstration of compliance**

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

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

3. Where a certified air navigation service provider does not comply any longer with the applicable common requirements or with the conditions attached to the certificate, the competent authority shall take a decision within a time period not exceeding one month. By this decision, the competent authority shall require the air navigation service provider to take corrective action.

The decision shall immediately be notified to the relevant air navigation service provider.

The competent authority shall check that the corrective action has been implemented before notifying its approval to the relevant air navigation service provider. Where the competent authority considers that corrective action has not been properly implemented within the agreed timetable, it shall take appropriate enforcement measures as foreseen in Article 7(7) of Regulation (EC) No 550/2004 and Articles 10, 22a(d), 25 and 68 of Regulation (EC) No 216/2008, as applicable, while taking into account the need to ensure the continuity of services.

Article 7

Facilitation of compliance monitoring

Air navigation service providers 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 national supervisory authority, 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 air navigation service providers which it has certified.

To this end, the competent authority shall establish and update annually an indicative inspection programme covering all the providers it has certified and based on an assessment of the risks associated with the different operations constituting the services provided. It shall consult the air navigation service providers 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 meet the provisions of Annex II, part 3.3;
- (d) verify that appropriate methods are in place to ensure that third parties assigned to operational safety-related tasks meet the provisions of Annex II, part 3.3.

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, experts 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 can carry out the review.

4. Within a period of three months following 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 the report.

5. The Commission shall forward the report to the Member State concerned. The latter may, within three months of receipt, present its observations; those observations shall include,

where relevant, the measures which it has taken or intends to take to respond to the review within a given timescale.

Unless otherwise agreed with the Member State concerned, the review 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 at 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 ANSP certificate, having submitted their application before the date of entry into force of this Regulation and not already issued with a certificate, shall show compliance with the provisions of this Regulation before the certificate is issued.

3. The authority of a Member State to which organisations for which the Agency is the competent authority in accordance with article 3 have applied for the issue of a certificate before the date of entry into force of this Regulation shall finalise the certification process in coordination with the Agency and transfer the file to the Agency upon the issue of the certificate.

Article 12 **Repeals**

1. Regulation (EC) No 2096/2005 is hereby repealed.
2. Regulation (EC) No 668/2008 is hereby repealed.
3. Article 6 of Regulation (EC) No 482/2008 is hereby repealed.

Article 13 **Entry into force**

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

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

Done at Brussels, ...

For the Commission
The President

ANNEX I

GENERAL REQUIREMENTS FOR THE PROVISION OF AIR NAVIGATION SERVICES

1. TECHNICAL AND OPERATIONAL COMPETENCE AND CAPABILITY

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

2. ORGANISATIONAL STRUCTURE AND MANAGEMENT

2.1. Organisational structure

An air navigation service provider shall set up and manage its organisation according to a structure that supports the safe, efficient and continuous provision of 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

An air navigation service provider 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 provider and with relevant Union requirements relevant for the development of infrastructure or other technology;
- (b) contain appropriate performance objectives in terms of quality and level of service, safety and cost-effectiveness.

An air navigation service provider 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 and delays to flights incurred as well as on financial arrangements:

- (a) information on the implementation of new infrastructure or other developments and a statement how they will contribute to improving the level and quality of services;

- (b) indicators of performance against which the level and quality of service may be reasonably assessed;
- (c) the service provider's expected short-term financial position as well as any changes to or impacts on the business plan.

3. SAFETY AND QUALITY MANAGEMENT

3.1. **Safety management**

An air navigation service provider shall manage the safety of all its services. In doing so, it shall establish formal interfaces with all stakeholders which may influence directly the safety of its services.

3.2. **Quality management system**

An air navigation service provider shall have in place at the latest two years after entry into force of this Regulation a quality management system which covers all air navigation services it provides according to the following principles. It 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 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 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 and quality management systems into their management system.

3.3. **Operations manuals**

An air navigation service provider shall provide and keep up-to-date operations manuals relating to the provision of its services for the use and guidance of operations personnel. It shall ensure that:

- (a) operations manuals contain 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 the amendments to the operations manual applying to their duties as well as of their entry into force.

4. SECURITY

An air navigation service provider shall establish a security management system to ensure:

- (a) the security of its facilities and personnel so as to prevent unlawful interference with the provision of services;
- (b) the security of operational data it receives or produces or otherwise employs, 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.

An air navigation service provider shall ensure the security clearance of its personnel, if appropriate, and coordinate with the relevant civil and military authorities to ensure the security of its facilities, personnel and data.

5. HUMAN RESOURCES

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

6. FINANCIAL STRENGTH

6.1. **Economic and financial capacity**

An air navigation service provider shall be able to meet its financial obligations, such as fixed and variable costs of operation or capital investment costs. It shall use an appropriate cost accounting system. It shall demonstrate its ability through the annual plan as referred to in part 2.2 of this Annex as well as through balance sheets and accounts as practicable under its legal statute.

6.2. **Financial audit**

In accordance with article 12(2) of Regulation (EC) No 550/2004, an air navigation service provider shall demonstrate that it is undergoing an independent audit on a regular basis.

7. LIABILITY AND INSURANCE COVER

An air navigation service provider shall have in place arrangements to cover its 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 air navigation service provider and the level of commercial insurance cover available.

An air navigation service provider which avails itself of 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 services**

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

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

8.2. **Contingency plans**

At the latest one year after certification, an air navigation service provider shall have in place contingency plans for all the services it provides in the case of events which result in significant degradation or interruption of its services.

9. REPORTING REQUIREMENTS

An air navigation service provider shall provide an annual report of its activities to the competent authority. This report shall cover its financial results without prejudice to Article 12 of Regulation (EC) No 550/2004, as well as its operational performance and any other significant activities and developments in particular in the area of safety.

The annual report shall include as a minimum:

- an assessment of the level and quality of service generated and of the level of safety provided,
- the performance of the air navigation service provider compared to the performance objectives established in the business plan, reconciling actual performance against the annual plan by using the indicators of performance established in the annual plan,

- developments in operations and infrastructure,
- the financial results, as long as they are not separately published in accordance with Article 12(1) of Regulation (EC) No 550/2004,
- information about the formal consultation process with the users of its services,
- information about the human resources policy.

The air navigation service provider shall make the content of the annual report available to the public under conditions set by the competent authority in accordance with national law.

ANNEX II

SPECIFIC REQUIREMENTS FOR THE PROVISION OF AIR TRAFFIC SERVICES

1. OWNERSHIP

A provider of air traffic services shall make explicit to the competent authority referred to in Article 7(2) of Regulation (EC) No 550/2004:

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

A provider 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 its services.

2. OPEN AND TRANSPARENT PROVISION OF SERVICES

In addition to the provision of Annex I, part 8.1 and where a Member State decides to organise the provision of specific ATS services in a competitive environment, a Member State may take all appropriate measures to ensure that 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

3.1.1. General safety requirements

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

- ensures a formalised, explicit and proactive approach to systematic safety management in meeting its safety responsibilities within the provision of its services; operates in respect of all its 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),

- 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),
- ensures that the achievement of satisfactory safety in air traffic services shall be afforded the highest priority (safety priority),
- 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, a provider of air traffic services shall:

- 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),
- ensure that a safety management function is identified with organisational responsibility for development and maintenance of the safety management system; 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 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),
- ensure that, wherever practicable, quantitative safety levels are derived and are maintained for all functional systems (quantitative safety levels),
- ensure that the SMS is systematically documented in a manner which provides a clear linkage to the organisation's safety policy (SMS documentation),
- 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),
- 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, the provisions of part 3.2 of this Annex shall apply,
- 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). It shall also demonstrate that it has 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, a provider of air traffic services shall ensure that:

- 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),
- 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),
- 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, a provider of air traffic services shall ensure that:

- all personnel are aware of the potential safety hazards connected with their duties (safety awareness),
- the lessons arising from safety occurrence investigations and other safety activities are disseminated within the organisation at management and operational levels (lesson dissemination),
- 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, a provider 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 his 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; and

- (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:
 - an identification of ATM-related credible hazards and failure conditions, together with their combined effects,
 - 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 provided in Section 4,
 - 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:
 - specifies the defences to be implemented to protect against the risk-bearing hazards,
 - 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, and
 - presents an assurance of its feasibility and effectiveness;
- (d) verification that all identified safety objectives and safety requirements have been met:
 - prior to its implementation of the change,
 - during any transition phase into operational service,
 - during its operational life, and
 - 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:

- 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,
- 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 shown 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 ⁽¹⁾
2	Serious incident ⁽¹⁾
3	Major incident associated with the operation of an aircraft, in which safety of aircraft may have been compromised, having led to a near collision between aircraft, 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

⁽¹⁾ As defined in Council Directive 94/56/EC of 21 November 1994 establishing the fundamental principles governing the investigation of civil aviation accidents and incidents (OJ L 319, 12.12.1994, p. 14).

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 safety management system, a provider of air traffic services shall implement a software safety assurance system in accordance with Commission Regulation (EC) No 482/2008⁹.

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

A provider 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 its 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, the provider 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. It shall have procedures in place for cases where the physical or mental condition of the personnel is in doubt.

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

⁹ OJ L 141, 31.5.2008, p. 5.

A provider of air traffic services shall be able to demonstrate that its 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 40;
- (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 82;
- (c) Annex 11 on air traffic services in its 13th edition of July 2001, including all amendments up to No 45.

ANNEX III

SPECIFIC REQUIREMENTS FOR THE PROVISION OF METEOROLOGICAL SERVICES

1. TECHNICAL AND OPERATIONAL COMPETENCE AND CAPABILITY

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

- operators and flight crew members for pre-flight and in-flight planning,
- providers of air traffic services and flight information services,
- search and rescue services units, and
- aerodromes.

A provider 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

A provider of meteorological services shall be able to demonstrate that its 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 16th edition of July 2007, including all amendments up to No 74;
- (b) Annex 11 on air traffic services in its 13th edition of July 2001, including all amendments up to No 45;
- (c) Annex 14 on aerodromes in the following versions:
 - (i) Volume I on aerodrome design and operations in its fourth edition of July 2004, including all amendments up to No 9,

- (ii) Volume II on heliports in its second edition of July 1995, including all amendments up to No 3.

ANNEX IV

SPECIFIC REQUIREMENTS FOR THE PROVISION OF AERONAUTICAL INFORMATION SERVICE

1. TECHNICAL AND OPERATIONAL COMPETENCE AND CAPABILITY

A provider of an aeronautical information service shall ensure that information and data is available for operations in a form suitable for:

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

A provider 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

A provider of aeronautical information services shall be able to demonstrate that its 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 aeronautical information services in the airspace concerned:

- (a) Annex 3 on meteorological service for international air navigation in its 16th edition of July 2007, including all amendments up to No 74;
- (b) Annex 4 on aeronautical charts in its 10th edition of July 2001, including all amendments up to No 54;
- (c) Annex 15 on aeronautical information services in its 12th edition of July 2004, including all amendments up to No 34.

ANNEX V

SPECIFIC REQUIREMENTS FOR THE PROVISION OF COMMUNICATION, NAVIGATION OR SURVEILLANCE SERVICES

1. TECHNICAL AND OPERATIONAL COMPETENCE AND CAPABILITY

A provider of communication, navigation or surveillance services shall ensure the availability, continuity, accuracy and integrity of its services.

A provider of communication, navigation or surveillance services shall confirm the quality level of the services it is providing and shall demonstrate that its equipment is regularly maintained and where required calibrated.

2. SAFETY OF SERVICES

A provider of communication, navigation or surveillance services shall comply with the requirements of Annex II, part 3 on the safety of services.

3. WORKING METHODS AND OPERATING PROCEDURES

A provider of communication, navigation or surveillance services shall be able to demonstrate that its 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 82;
- (b) Volume II on communication procedures including those with PANS status in its sixth edition of October 2001, including all amendments up to No 82;
- (c) Volume III on communications systems in its second edition of July 2007 including all amendments up to No 82;
- (d) Volume IV on surveillance radar and collision avoidance systems in its fourth edition of July 2007, including all amendments up to No 82;

- (e) Volume V on aeronautical radio frequency spectrum utilisation in its second edition of July 2001, including all amendments up to No 82.