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(¹) Text with EEA relevance

EN

Acts whose titles are printed in light type are those relating to day-to-day management of agricultural matters, and are generally valid for a limited period.

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II

(Non-legislative acts)

REGULATIONS

COMMISSION IMPLEMENTING REGULATION (EU) No 390/2013

of 3 May 2013

laying down a performance scheme for air navigation services and network functions

(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 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) ⁽¹⁾ as amended by Regulation (EC) No 1070/2009 of the European Parliament and of the Council ⁽²⁾, and in particular Article 11 thereof,

Whereas:

- (1) Regulation (EC) No 549/2004 provides that a performance scheme for air navigation services and network functions is set up. For the detailed functioning of the performance scheme the Commission should adopt implementing rules.
- (2) The performance scheme should contribute to sustainable development of the air transport system by improving the overall efficiency of air navigation services across the key performance areas of safety, environment, capacity and cost-efficiency, in line with the Performance Framework of the European Air Traffic Management (ATM) Master Plan, while having due regard to the overriding safety objectives.
- (3) 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) ⁽³⁾ as amended by Regulation (EC) No 1070/2009 provides for the establishment of a charging scheme and common projects to implement the European ATM Master Plan.

Both, the charging scheme and the common projects are integral to the successful implementation of the performance scheme.

- (4) Pursuant to Article 11(1) of Regulation (EC) No 549/2004, this Regulation should apply to the air traffic management network functions referred to in Article 6 of Regulation (EC) No 551/2004 of the European Parliament and of the Council on the organisation and use of the airspace in the single European sky (the airspace Regulation) ⁽⁴⁾ as amended by Regulation (EC) No 1070/2009.
- (5) The Commission may be assisted in implementing the performance scheme by a Performance Review Body. This body should be able to give independent advice to the Commission in all areas that influence the performance of air navigation services and network functions.
- (6) In view of the fact that national supervisory authorities have a key role to play in the implementation of the performance scheme, Member States should ensure that they are in a position to fulfil effectively their responsibilities.
- (7) In order to guarantee long-term improvements towards the high-level societal goals, as reflected in the European ATM Master Plan, the performance scheme should be operated with a view going beyond a single reference period.
- (8) The performance scheme should address air navigation services through a gate-to-gate approach, including *en route* and terminal air navigation services with a view to improving the overall performance of the network.
- (9) The performance scheme should provide for indicators and binding targets in all key performance areas with required safety levels fully achieved and maintained.

⁽¹⁾ OJ L 96, 31.3.2004, p. 1.

⁽²⁾ OJ L 300, 14.11.2009, p. 34.

⁽³⁾ OJ L 96, 31.3.2004, p. 10.

⁽⁴⁾ OJ L 96, 31.3.2004, p. 20.

- (10) When adopting Union-wide performance targets for a reference period, the Commission should take due account of the level of performance achieved in the previous reference period(s).
- (11) Given the strong links between the different key performance areas, the interdependencies between performance targets, having regard to the overriding safety objectives, should be duly taken into account in the preparation and monitoring of the performance scheme.
- (12) Performance plans should be established at the level of functional airspace blocks showing, for reasons of transparency, the contribution of each air navigation service provider within a functional airspace block in reaching the targets, monitored at the most appropriate level.
- (13) Performance plans should describe the measures, such as incentive schemes, aimed at stakeholders to improve performance at all levels. Due to its overriding nature, safety should not be subject to incentives.
- (14) In order that views of stakeholders are heard, effective consultations should take place at national, functional airspace block and Union level.
- (15) In circumstances unforeseeable at the moment of adoption of the performance plans, and which are both insurmountable and beyond the control of the Member States and the entities subject to the performance targets, the establishment of appropriate alert mechanisms should allow the implementation of appropriate actions aiming at preserving the safety requirements as well as continuity in the provision of service, which may include the revision of Union-wide or local performance targets.
- (16) Civil-military cooperation and coordination are of the utmost importance in achieving the objectives of the performance scheme, having due regard to military mission effectiveness.
- (17) The performance scheme should be without prejudice to the provisions of the Regulation (EC) No 549/2004 aiming at safeguarding essential security or defence policy interests.
- (18) Specific and measurable key performance indicators should be selected, on the basis of which responsibility for achieving the performance targets can be assigned. The associated targets should be achievable, realistic and time-bound, and aim at effectively steering the sustainable performance of air navigation services.
- (19) The implementation of binding performance targets supported by incentives of a financial nature requires an appropriate link with Commission Implementing Regulation (EU) No 391/2013 of 3 May 2013 laying down a common charging scheme for air navigation services ⁽¹⁾.
- (20) The key performance indicators and performance targets must be established and implemented in line with the safety objectives and standards laid down in Regulation (EC) No 216/2008 of the European Parliament and of the Council ⁽²⁾ and its implementing rules together with the measures taken by the Union to achieve and maintain these objectives.
- (21) The Commission should assess the performance plans and targets and establish their consistency with and adequate contribution to the Union-wide targets and the overall performance of the European ATM network. If this consistency and adequate contribution cannot be established, the Commission should ask for the performance plan(s) and target(s) to be revised and/or corrective measures to be taken.
- (22) During the reference periods an effective performance monitoring process, including data collection and dissemination, should be put in place to ensure that the evolution of performance allows reaching the targets and if necessary introducing corrective measures.
- (23) When, on the basis of monitoring results, the Commission has substantial evidence that initial data, assumptions and rationales underlying the setting of initial targets are no longer valid, the Commission may decide to revise the Union-wide performance targets or allow, upon request of a Member State, that local targets may be revised.
- (24) The execution of network functions should be subject to performance targets. Therefore, this Regulation should apply to the Network Manager established in accordance with Article 3 of 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 ⁽³⁾. Commission Regulation (EU) No 677/2011 should be amended accordingly.
- (25) 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 ⁽⁴⁾, Article 26 of Commission Regulation (EU) No 677/2011, and Commission Implementing Regulation (EU) No 1216/2011 of 24 November 2011 amending Commission Regulation (EU) No 691/2010 laying down a performance scheme for air navigation services and network functions ⁽⁵⁾, should be repealed with effect of 1 January 2015.
- (26) The measures provided for in this Regulation are in accordance with the opinion of the Single Sky Committee,

⁽¹⁾ See page 31 of this Official Journal.

⁽²⁾ OJ L 79, 19.3.2008, p. 1.

⁽³⁾ OJ L 185, 15.7.2011, p. 1.

⁽⁴⁾ OJ L 201, 3.8.2010, p. 1.

⁽⁵⁾ OJ L 310, 25.11.2011, p. 3.

HAS ADOPTED THIS REGULATION:

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject matter and scope

1. This Regulation lays down the measures to improve the overall performance of air navigation services and network functions for general air traffic within the International Civil Aviation Organization (ICAO) European (EUR) and Africa (AFI) regions where Member States are responsible for the provision of air navigation services with a view to meeting the requirements of all airspace users.

2. For the purpose of target setting and performance monitoring, this Regulation shall apply to the air navigation services provided by:

- (a) the air traffic service providers designated in accordance with Article 8 of Regulation (EC) No 550/2004;
- (b) the providers of meteorological services, if designated in accordance with Article 9(1) of Regulation (EC) No 550/2004;
- (c) the Network Manager established in accordance with Article 3 of Commission Regulation (EU) No 677/2011.

It shall also apply for the purpose of target setting and performance monitoring on cost-efficiency to the authorities or entities incurring eligible costs to be recovered through user charges, as specified in Article 15(2)(b) of Regulation (EC) No 550/2004 and Article 6(2) of Implementing Regulation (EU) No 391/2013.

3. Without prejudice to paragraph 4, Member States may decide not to apply this Regulation to terminal air navigation services provided at some or all of their airports with fewer than 70 000 IFR air transport movements per year. They shall inform the Commission accordingly.

4. Where none of the airports in a Member State reaches the threshold of 70 000 IFR air transport movements per year, this Regulation shall apply as a minimum to the airport with the highest number of IFR air transport movements.

5. Target setting on cost-efficiency shall apply to the determined costs established in Article 15(2)(a) and (b) of Regulation (EC) No 550/2004.

6. Member States may also apply this Regulation:

- (a) in airspace under their responsibility within other ICAO regions, on condition that they inform the Commission and the other Member States accordingly, and without

prejudice to the rights and duties of Member States under the 1944 Chicago Convention on international civil aviation (the Chicago Convention);

- (b) to providers of air navigation services having the permission to provide air navigation services without certification, in accordance with Article 7(5) of Regulation (EC) No 550/2004.

7. Notwithstanding the protection of information provisions of Directive 2003/42/EC of the European Parliament and of the Council ⁽¹⁾ and its implementing regulations Commission Regulation (EC) No 1321/2007 ⁽²⁾ and Commission Regulation (EC) No 1330/2007 ⁽³⁾, the requirements related to the provision of data as defined in Chapter V shall apply to national authorities, air navigation service providers, airport operators, airport coordinators, and air carriers.

Article 2

Definitions

For the purposes of this Regulation:

- (1) 'airport operator' means the managing body of an airport which, in conjunction with other activities or otherwise, has the task under national laws or regulations of administering and managing the airport facilities and coordinating and controlling the activities of the various operators present at the airport or within the airport system concerned;
- (2) 'data' means qualitative, quantitative and other relevant information relating to air navigation performance collected and systematically processed by, or on behalf of, the Commission for the purpose of implementing the performance scheme;
- (3) 'performance indicators' means the indicators used for the purpose of performance monitoring, benchmarking and reviewing;
- (4) 'key performance indicators' means the performance indicators used for the purpose of performance target setting;
- (5) 'IFR air transport movements' means the sum of take-offs and landings performed under instrument flight rules calculated as the yearly average over the three calendar years preceding the submission of the performance plans;
- (6) 'binding target' means a performance target adopted by Member States as part of a performance plan and subject to an incentive scheme and/or corrective action plans;
- (7) 'air carrier' means an air transport undertaking with a valid operating license issued by a Member State in accordance with European Union Law;
- (8) 'determined costs' means the costs established in Article 15(2)(a) and (b) of Regulation (EC) No 550/2004;

⁽¹⁾ OJ L 167, 4.7.2003, p. 23.

⁽²⁾ OJ L 294, 13.11.2007, p. 3.

⁽³⁾ OJ L 295, 14.11.2007, p. 7.

- (9) 'national authority' means the regulatory and/or supervisory authority at national or functional airspace block level whose costs are eligible for recovery from airspace users when they are incurred in relation with the provision of air navigation services in application of Article 6(2) of Implementing Regulation (EU) No 391/2013;
- (10) 'just culture' means a culture in which front line operators or others are not punished for actions, omissions or decisions taken by them that are commensurate with their experience and training, but where gross negligence, wilful violations and destructive acts are not tolerated;
- (11) 'airport coordinator' means the natural or legal person appointed by a Member State to carry out the coordination duties at coordinated airports set out in Article 4 of Council Regulation (EEC) No 95/93 of 18 January 1993 on common rules for the allocation of slots at Community airports ⁽¹⁾;
- (12) 'performance monitoring' means the continuous process of collecting and analysing data in order to measure the actual outcome of a system versus the relevant (key) performance targets and performance plans using the (key) performance indicators set out in Article 9 and Annex I;
- (13) 'reference period' means the period of validity and application of the Union-wide performance targets and the performance plans, as set out in Article 11(3)(d) of Regulation (EC) No 549/2004;
- (14) 'runway incursion' means any occurrence at an aerodrome involving the incorrect presence of an aircraft, vehicle or person on the protected area of a surface designated for the landing and take-off of aircraft;
- (15) 'air traffic services unit' (ATS unit) means a unit, civil or military, responsible for providing air traffic services;
- (16) 'CNS, MET and AIS services' means communication, navigation and surveillance services, meteorological services for air navigation and aeronautical information services;
- (17) 'exceptional event' means circumstances under which ATM capacity is abnormally reduced so that the level of ATFM delays is abnormally high as a result of: a planned limitation induced through operational or technical change, major adverse weather circumstances, the unavailability of large airspace parts either through natural or political reasons, or industrial action and the activation of the EACCC by the Network Manager as a result of one or more of these causes;
- (18) 'restructuring costs' means significant one-time costs incurred by air navigation service providers in the process of restructuring by way of introducing new technologies and procedures and associate business models to stimulate integrated service provision where the Member State wishes to recover the costs in one or more reference periods. They may include costs incurred in compensating employees, closing air traffic control centres, shifting activities to new locations and, writing off assets and/or acquiring strategic participations in other air navigation service providers.

Article 3

Performance Review Body

1. Where the Commission decides to designate a Performance Review Body to assist it in the implementation of the performance scheme, such designation shall be for a fixed term consistent with the reference periods. The Commission shall appoint the chair and the members of the Performance Review Body.
2. The Performance Review Body shall have the appropriate competence and impartiality to carry out independently the tasks assigned to it by the Commission, in particular in the applicable key performance areas.
3. The Performance Review Body shall assist the Commission in the implementation of the performance scheme, in particular as regards:
 - (a) collection, examination, validation and dissemination of performance-related data;
 - (b) the definition or adaptation of key performance areas, in line with those identified in the performance framework of the ATM Master Plan, as referred to in Article 9(1), and the related key performance indicators;
 - (c) the definition of appropriate key performance indicators covering, in all key performance areas, the performance of the network functions and of air navigation services both in *en route* and terminal services;
 - (d) the setting and the revision of Union-wide performance targets;
 - (e) setting of the alert threshold(s) referred to in Article 10(4) for activating the alert mechanisms established in Article 19;
 - (f) the consistency assessment of adopted performance plans, including performance targets, with the Union-wide targets;
 - (g) where appropriate, the consistency assessment of the alert thresholds adopted in application of Article 19(3) with the European Union-wide alert thresholds referred to in Article 10(4);
 - (h) where appropriate, the assessment of the revised performance targets or the corrective measures taken by the Member States concerned;
 - (i) monitoring, benchmarking and review of the performance of air navigation services including investment and capital expenditure, at local and Union levels;
 - (j) monitoring, benchmarking and review of the performance of the network functions;

⁽¹⁾ OJ L 14, 22.1.1993, p. 1.

- (k) monitoring of the overall performance of the European ATM network, including the preparation of annual reports to the Single Sky Committee;
- (l) assessment of the achievement of the performance targets at the end of each reference period with a view to preparing for the following period;
- (m) assessment of the performance plan of the Network Manager, including its consistency with the Union-wide performance targets;
- (n) maintenance and support in the coordination of a stakeholder consultation calendar concerning performance plans and the consultation duties referred to in Article 9(1) of Implementing Regulation (EU) No 391/2013.

4. At the Commission's request, the Performance Review Body shall provide *ad hoc* information or reports on performance-related issues.

5. The Performance Review Body may report and make recommendations to the Commission for improvement of the scheme.

6. As regards relations with national supervisory authorities:

- (a) for the purpose of monitoring of the overall performance of the European ATM network, the Performance Review Body shall obtain from the national supervisory authorities the necessary information in relation to the performance plans;
- (b) the Performance Review Body shall assist the national supervisory authorities upon their request by providing an independent view of performance issues such as factual comparisons between air navigation service providers operating in similar environments (benchmarking), analyses of changes in performance over the last five years or analyses of projections;
- (c) national supervisory authorities may request the Performance Review Body's assistance in determining ranges of indicative values for target setting, taking into account the Union-wide targets. These values shall be available to national supervisory authorities, air navigation service providers, airport operators and airspace users.

7. To ensure consistency with the objectives and standards established and implemented in accordance with Regulation (EC) No 216/2008, the Performance Review Body shall cooperate as appropriate with the European Aviation Safety Agency (EASA) in the performance of the tasks referred to in paragraph 3 when they relate to safety.

8. For the purpose of monitoring of the overall performance of the European ATM network, the Performance Review Body shall develop working arrangements with the air navigation service providers, airport operators, airport coordinators and air carriers.

Article 4

National supervisory authorities

1. The national supervisory authorities shall be responsible for the drawing up of the performance plans, the performance oversight and the monitoring of performance plans and targets. In carrying out these tasks, they shall act impartially, independently and transparently.

2. Member States shall ensure that national supervisory authorities have, or have access to, the necessary resources and capabilities in all the key performance areas to carry out the tasks provided for in this regulation, including the inspection powers to perform the tasks referred to in Article 20.

3. Where a Member State has more than one national supervisory authority, it shall notify the Commission which national supervisory authority is responsible for the national coordination for the implementation of this Regulation.

Article 5

Functional airspace blocks

1. Member States shall establish performance plans at functional airspace block level.

2. To comply with the obligation in paragraph 1, Member States shall:

- (a) ensure that the performance plan conforms to the template set out in Annex II;
- (b) notify the Commission of the national supervisory authority or body which is responsible for coordination within the functional airspace block and for the relations with the Commission as regards the implementation of the performance plan;
- (c) make appropriate arrangements to ensure that:
 - (i) subject to the provisions of point (e) and Annex I, a single target is established for each key performance indicator;
 - (ii) for reasons of transparency, the contribution of each air navigation service provider within the functional airspace block, monitored at the most appropriate level, for achieving the performance targets set for the functional airspace block is identified in the performance plan;
 - (iii) the measures referred to in Article 11(3)(d) of Regulation (EC) No 549/2004 are defined and applied during the reference period when targets are not met. The annual values in the performance plan shall be used for this purpose;
- (d) be responsible for determining and achieving the performance targets set at local levels, namely functional airspace block, national, charging zone and airport;

(e) where no common *en route* charging zone has been established within the meaning of Article 4 of Implementing Regulation (EU) No 391/2013, and where, as a consequence, *en route* cost-efficiency targets are set for more than one charging zone within the functional airspace block, consolidate these targets to a single value

at aggregated level for *en route* air navigation services and provide, for information purposes, an overall figure demonstrating the cost efficiency effort at functional airspace block level;

- (f) where a charging zone is modified in the course of a reference period, demonstrate that this change still allows the performance targets adopted for the period to be met;
- (g) ensure that the performance plan is consistent with the scope of this Regulation in accordance with Article 1(6) of this Regulation and Article 7 of Regulation (EC) No 549/2004.

Article 6

Network Manager

The Network Manager established in Article 6 of Regulation (EC) No 551/2004 ⁽¹⁾ and Article 3 of Commission Regulation (EU) No 677/2011 shall carry out the following tasks in relation to the performance scheme:

- (a) shall support the Commission by providing relevant input for the preparation of Union-wide performance targets before the reference periods and for monitoring the achievement of the performance targets during the reference period. In particular, the Network Manager shall draw the Commission's attention to any significant and persistent drops in operational performance;
- (b) pursuant to Article 21(5), shall provide the Commission with access to all data listed in Annex V;
- (c) shall support functional airspace blocks and their air navigation service providers in reaching their performance targets during reference periods by ensuring consistency between performance plans, the Network Strategy Plan and the Network Operations Plan;
- (d) shall draw up a performance plan, the Network Performance Plan, in accordance with Article 5(1) and Article 16(1)(a) of Regulation (EU) No 677/2011, which shall be submitted to the Commission at the latest six months before the beginning of each reference period and adopted by the Commission before the beginning of each reference period. This performance plan shall be public and shall:
 - (i) contain performance targets for all key performance areas and for all indicators, consistent with the Union-wide performance targets for the entire reference period, with the use of annual values for monitoring purposes;
 - (ii) contain a description of the actions aimed at reaching the targets;
 - (iii) contain, where necessary or where decided by the Commission, additional key performance indicators and targets.

Article 7

Coordination with the European Aviation Safety Agency (EASA)

In application of Article 13a of Regulation (EC) No 549/2004 and in accordance with Regulation (EC) No 216/2008, the Member States and the Commission shall coordinate as appropriate with the EASA to ensure that the following aspects are properly addressed:

- (a) the safety aspects of the performance scheme, including the setting, revision and implementation of safety key performance indicators and Union-wide performance targets as well as the provision of proposals for appropriate actions and measures following the activation of an alert mechanism;
- (b) the consistency of the safety key performance indicators and targets with the implementation of the European Aviation Safety Programme.

Article 8

Duration of the reference periods

1. The first reference period for the performance scheme shall cover the calendar years 2012 to 2014 inclusive. The second reference period shall cover the calendar years 2015 to 2019 inclusive. Subsequent reference periods shall be of five calendar years, unless otherwise provided through the amendment of this Regulation.
2. The same reference period shall apply to the Union-wide performance targets and performance plans and targets.

Article 9

Key performance areas and performance indicators

1. For the purpose of target setting, the possible addition and adaptation of other key performance areas pursuant to Article 11(4)(b) of Regulation (EC) No 549/2004 shall be decided by the Commission in accordance with the procedure referred to in Article 5(3) of that Regulation.
2. For the purpose of target setting, one or a limited number of key performance indicators shall correspond to each key performance area. The performance of air navigation services shall be assessed against binding targets for each key performance indicator.
3. Section 1 of Annex 1 sets out the key performance indicators for target setting and the performance indicators at Union level, selected for each key performance area.
4. Section 2 of Annex I sets out the local key performance indicators for local target setting and the performance indicators at local level used for establishing the performance targets. The local level, namely functional airspace block, national, charging zone and airport, is specified in Section 2 of Annex I.

⁽¹⁾ OJ L 96, 31.3.2004, p. 20.

5. The key performance indicators shall not be changed in the course of a reference period. Changes shall be adopted by amendment of this Regulation at the latest six months before the adoption of new Union-wide performance targets.

6. For their own performance monitoring and/or as part of the performance plan, Member State may decide to establish performance indicators and associated targets in addition to the key performance areas and key performance indicators referred to in this Article and set out in Section 2 of Annex I. These additional indicators and targets shall support the achievement of the Union-wide targets and the resulting targets at local level. They may for example integrate and describe the civil-military or meteorological dimension of the performance plan, and may be accompanied by appropriate incentive schemes.

7. In order to facilitate implementation and measurement of the safety (key) performance indicators, EASA, in consultation with the Performance Review Body, shall adopt acceptable means of compliance and guidance material in accordance with the procedure established under Article 52 of Regulation (EC) No 216/2008, before the beginning of the second reference period.

CHAPTER II

THE PREPARATION OF PERFORMANCE PLANS

Article 10

Union-wide performance targets

1. The Commission shall adopt Union-wide performance targets, in accordance with the procedure referred to in Article 5(3) of Regulation (EC) No 549/2004, taking into account the relevant inputs from the Network Manager and the national supervisory authorities and after consultation with the stakeholders as referred to in Article 10 of that Regulation, other relevant organisations and the EASA for the safety aspects of performance.

2. Subject to Article 9(3), Union-wide targets shall be proposed by the Commission at the latest 15 months before the beginning of the reference period and shall be adopted at the latest 12 months before the beginning of the reference period.

3. Union-wide target setting for the key performance indicator set out in point 4.1(b) of Section 1 of Annex I shall start as of the third year of the second reference period, subject to a Commission decision, following the procedure referred to in paragraph 1.

4. Together with the adoption of the Union-wide performance targets, the Commission shall determine the alert threshold(s) beyond which the alert mechanisms referred to in Article 19 may be activated.

5. The Commission shall substantiate each Union-wide performance target with a description of the underlying assumptions and rationale for setting these targets, such as the use made of inputs from the Network Manager, national supervisory authorities and other factual data, traffic forecasts, the composition of the groups of air navigation service providers or functional airspace blocks having a similar operational and economic environment.

Article 11

Drawing up of performance plans

1. The national supervisory authorities, at functional airspace block level, shall draw up performance plans containing targets consistent with the Union-wide performance targets and the assessment criteria set out in Annex IV.

Without prejudice to the template set out in Annex II, the performance plan may include different sections relating to the local level, namely functional airspace block, national, charging zone and airport.

2. To support the preparation of the performance plans national supervisory authorities shall ensure that:

- (a) air navigation service providers submit their business plans to the national supervisory authorities;
- (b) stakeholders are consulted on the performance plan and targets in accordance with Article 10 of Regulation (EC) No 549/2004. Adequate information shall be provided to stakeholders at least three weeks prior to the consultation meeting.

3. The performance plans shall contain, in particular:

- (a) the traffic forecast, expressed in service units, to be provided for each year of the reference period, at functional airspace block level and for each charging zone in the functional airspace block, with a justification of the figures used;
- (b) the determined costs for air navigation services for each year of the reference period and for each charging zone in accordance with the provisions of Article 15(2)(a) and (b) of Regulation (EC) No 550/2004;
- (c) a description of investment, including that necessary to achieve the performance targets, detailing their relevance in relation with the European ATM Master Plan, the Network Strategy Plan and the common projects referred to in Article 15a(3) of Regulation (EC) No 550/2004. This description shall highlight the benefits and synergies achieved at functional airspace block level;
- (d) performance targets in each relevant key performance area, set by reference to each key performance indicator, for the entire reference period, with annual values to be used for monitoring and incentive purposes;
- (e) consideration of the interdependencies between key performance areas, including an evaluation of the impact on safety of the performance plan with any mitigation required to maintain safety assurance;
- (f) a description of the civil-military dimension of the plan describing the performance of flexible use of airspace (FUA) application in order to increase capacity with due regard to military mission effectiveness, and, if deemed

appropriate, relevant performance indicators and targets in consistency with other indicators and targets of the performance plan;

- (g) a description and justification of how the performance targets referred to in point (d) reconcile with and contribute to the Union-wide performance targets and the performance of the European ATM network;
- (h) an identification of each air navigation service provider concerned and its specific contribution to meeting the targets, monitored for reasons of transparency at the most appropriate level as referred to in Article 5(2)(c)(ii);
- (i) a description of the incentive mechanisms to be applied on the air navigation service providers concerned to encourage achievement of the targets over the reference period;
- (j) the measures taken by the national supervisory authorities to monitor achievement of the performance targets;
- (k) a description of the outcome of the stakeholder consultation, including the issues raised by the participants and the actions agreed upon.

4. The performance plans shall be based on the template set out in Annex II and may, if the Member States so decide in application of Article 9(6), contain additional indicators with associated targets.

5. The Network Manager shall draw up a Network Performance Plan containing targets consistent with the Union-wide performance targets and, *mutatis mutandis*, the assessment criteria set out in Annex IV.

6. To prepare the Network Performance Plan, the Network Manager shall:

- (a) ensure consultation in accordance with Article 14 of Commission Regulation (EU) No 677/2011;
- (b) use the template set out in Annex III.

Article 12

Incentive schemes

1. The incentive schemes applied by Member States as part of their performance plan shall comply with the following general principles:

- (a) they shall be effective and proportional, and shall not be changed during the reference period;
- (b) they shall be implemented on a non-discriminatory and transparent basis to support improvements in the performance of service provision;
- (c) they shall be part of the regulatory environment known *ex ante* by all stakeholders and be applicable during the entire reference period;
- (d) they shall induce entities subject to target setting to achieve a high level of performance and meet the associated targets.

2. Incentives on cost-efficiency targets shall be of a financial nature and shall be governed by appropriate provisions set out in Articles 13 and 14 of Implementing Regulation (EU) No 391/2013. They shall consist of a risk-sharing mechanism at national or functional airspace block level.

3. Incentives on capacity targets shall be of a financial nature and shall be governed by the provisions of Article 15 of Implementing Regulation (EU) No 391/2013. They may be complemented by incentives of another nature, such as corrective action plans with deadlines and associated measures, decided by national supervisory authorities taking account of local circumstances.

4. Incentives on environment targets may be of a financial nature and shall be governed by the provisions of Article 15 of Implementing Regulation (EU) No 391/2013. They may be complemented by incentives of another nature, such as corrective action plans with deadlines and associated measures, decided by national supervisory authorities taking account of local circumstances.

5. In addition, Member States, at local level, may modulate air navigation charges, as provided for in Article 16 of Implementing Regulation (EU) No 391/2013.

CHAPTER III

THE ADOPTION OF PERFORMANCE PLANS

Article 13

Initial adoption of performance plans

On the proposal of the national supervisory authorities, Member States shall adopt performance plans containing binding performance targets and submit them to the Commission at the latest six months before the beginning of the reference period.

Article 14

Assessment and revision of performance plans and targets

1. The Commission shall assess the performance plans, their targets and in particular their consistency with and adequate contribution to the Union-wide performance targets, as well as with the criteria laid down in Annex IV, taking into account the evolution of the context that may have occurred between the date of adoption of the Union-wide targets and the date of assessment of the performance plan. Where targets are set at local level without reference to a Union-wide performance target, the assessment shall be based on the criteria laid down in Annex IV.

2. Where the Commission finds that a performance plan, or part thereof, and its targets are consistent with and adequately contribute to the Union-wide targets and are consistent with all the criteria laid down in Annex IV, it shall notify the Member State(s) concerned thereof within five months after reception of the performance plan.

3. Where the Commission finds that a performance plan, or part thereof, and some or all of its target(s) are not consistent with the Union-wide targets and are not contributing adequately

to them and/or are not consistent with one or more of the criteria laid down in Annex IV, it shall, within five months after reception of the performance plan and in accordance with the procedure established in Article 5(2) of Regulation (EC) No 549/2004, issue a recommendation to the Member State(s) concerned to adopt a revised performance plan, or part thereof, and/or target(s). This recommendation shall be made after consultation of the Member State(s) concerned, and shall identify precisely which parts of the performance plan and/or target(s) are to be revised as well as explaining the rationale of the Commission's assessment.

4. In such case, the Member State(s) concerned shall adopt a revised performance plan, or part thereof, and/or target(s), taking account of the Commission's views, together with the appropriate measures for reaching those targets and shall notify the Commission accordingly within four months after the notification of the recommendation.

Article 15

Assessment of revised performance plans and targets and adoption of corrective measures

1. The Commission shall assess each revised performance plan, or part thereof, and its performance targets on the basis of the criteria laid down in Annex IV.

2. Where the Commission finds that a revised performance plan, or part thereof, and its performance targets are consistent with the Union-wide targets and are adequately contributing towards them and are consistent with all the criteria laid down in Annex IV, it shall notify the Member State(s) concerned thereof within five months after receiving the revised performance plan.

3. Where the Commission finds that a revised performance plan, or part thereof, and some or all of its performance targets are still not consistent with the Union-wide targets and are not contributing adequately to them, and/or are still not consistent with one or several of the criteria laid down in Annex IV, the Commission shall, within five months after receiving the revised performance plan, or part thereof, and in accordance with the procedure referred to in Article 5(3) of Regulation (EC) No 549/2004, decide that the Member State(s) concerned shall take corrective measures.

4. Such decision shall identify precisely, against the criteria laid down in Annex IV, which part of the plan and target(s) are to be revised and the rationale of the Commission's assessment. It may stipulate the level of performance expected for those targets in order to allow the Member State(s) concerned to take the appropriate corrective measures, and/or may contain suggestions for such corrective measures.

5. Within two months after the Commission's decision, the corrective measures adopted by the Member State(s) concerned shall be communicated to the Commission, together with the elements demonstrating their consistency with the Commission's decision.

Article 16

Performance plans or corrective measures adopted after the beginning of the reference period

Performance plans or corrective measures adopted after the beginning of the reference period as a result of the implementation of the procedures set out in Articles 14 and 15 shall apply retroactively as from the first day of the reference period.

Article 17

Revision of the targets

1. In accordance with the procedure referred to in Article 5(3) of Regulation (EC) No 549/2004, the Commission may decide to revise the Union-wide targets, and/or may, upon request of a Member State, allow that one or several local targets may be revised:

- (a) when on the basis of its report referred to in Article 18(4) it has substantial evidence that the initial data, assumptions and rationales underlying the setting of the initial targets are no longer valid; or
 - (b) as a result of the application of an alert mechanism as referred to in Article 19; or
 - (c) following a Commission decision in accordance with Article 10(3) as regards the key performance indicator set out in point 4.1(b) of Section 1 of Annex I.
2. A revision of the Union-wide targets may result in the amendment of the existing performance plans. In such case the Commission may decide to make an appropriate adjustment of the time schedule set out in Chapters II and III of this Regulation.

CHAPTER IV

MONITORING OF THE ACHIEVEMENT OF PERFORMANCE

Article 18

Ongoing monitoring and reporting

1. The national supervisory authorities and the Commission shall monitor the implementation of the performance plans. For this purpose the annual values in the performance plan shall be used. If, during the reference period, targets are not met, the Member State(s) concerned shall define and apply corrective measures designed to rectify the situation and shall communicate them to the Commission. Where the Commission finds that such corrective measures are not sufficient to rectify the situation, it shall, within five months after receipt of the measures and in accordance with the procedure laid down in Article 5(2) of Regulation (EC) No 549/2004, notify thereof the Member State(s) concerned including suggestions for corrective measures.

2. Where the Commission witnesses a significant and persistent drop in performance at local or functional airspace block level, affecting other States parties to the single European sky and/or the entire European airspace, it may request the Member State(s) concerned to define, apply and communicate

to the Commission corrective measures designed to achieve the targets set in their performance plan. Where the Commission finds that such measures are not sufficient to rectify the situation, it shall, within five months after receipt of the measures and in accordance with the procedure laid down in Article 5(2) of Regulation (EC) No 549/2004, notify thereof the Member State(s) concerned including suggestions for corrective measures.

3. The Commission shall monitor the implementation of the Network Performance Plan of the Network Manager. For this purpose the annual values in the performance plan shall be used. If during the reference period targets are not met, the Commission shall request the Network Manager to define, apply and communicate to the Commission corrective measures designed to achieve the targets set in Network Performance Plan. The Commission shall inform the national supervisory authorities or bodies as defined in Article 5(2)(b) of such corrective measures.

4. Not later than 1 June each year and whenever performance targets risk not being achieved, the national supervisory authorities or bodies as defined in Article 5(2)(b) shall report to the Commission on the monitoring of the performance plans and targets. The reports shall be based on recommendations that will be elaborated by the Commission before the beginning of the reference period. The Commission shall report to the Single Sky Committee on the achievement of performance targets at least once a year.

Article 19

Alert mechanisms

1. Where, due to circumstances that were unforeseeable at the time of adoption of the performance plans and are both insurmountable and beyond the control of the Member States, air navigation service providers and the Network Manager, the alert threshold(s) in Article 10(4) is/are reached at Union level over a calendar year, the Commission shall review the situation in consultation with the Member States through the Single Sky Committee, and make proposals for appropriate actions within four months. This may include the revision of the Union-wide and as a consequence revision of the local performance targets.

2. Where, due to circumstances that were unforeseeable at the time of adoption of the performance plans and are both insurmountable and beyond the control of the Member States, air navigation service providers and the Network Manager, the alert threshold(s) in Article 10(4) is/are reached at local level over a calendar year, the national supervisory authorities concerned shall review the situation liaising with the Commission and make proposals for appropriate actions within four months. This may include the revision of the local performance targets.

3. Member States may decide to adopt alert thresholds different from the ones in Article 10(4), in order to take account of local circumstances and specificities. In such case, these thresholds shall be set out in the performance plan and be consistent with the thresholds adopted pursuant to Article 10(4). The deviations shall be supported by detailed justification. When these thresholds are activated, the process set out in paragraph 1 shall apply.

4. Where the implementation of an alert mechanism entails revision of performance plans and targets, the Commission shall facilitate such revision through an appropriate adjustment of the applicable time schedule in accordance with the procedure referred to in Chapters II and III.

Article 20

Facilitation of compliance monitoring

1. Air navigation service providers and the Network Manager shall facilitate inspections and surveys, including site visits, carried out by the Commission and the national supervisory authority concerned, or by a qualified entity acting on the national supervisory authority's behalf, or where relevant by the EASA. Without prejudice to the supervisory powers conferred upon the national supervisory authorities and the EASA, the authorised persons shall be empowered:

- (a) to examine, in relation to all key performance areas, documents and any other material relevant to the establishment of performance plans and targets;
- (b) to take copies of or extracts from such documents;
- (c) to ask for an oral explanation on site.

2. The inspections and surveys in paragraph 1 shall be carried out in compliance with the procedures in force in the Member State in which they are to be undertaken.

3. The national supervisory authorities shall monitor the implementation of this Regulation in the performance area of safety in accordance with the procedures for safety oversight established by Commission Regulation (EU) No 1034/2011 ⁽¹⁾.

4. In the context of standardisation inspections the EASA shall monitor the implementation of this Regulation by Member States in the key performance area of safety in accordance with the working methods provided for in Article 24(5) of Regulation (EC) No 216/2008 ⁽²⁾.

CHAPTER V

COLLECTION, VALIDATION, EXAMINATION, EVALUATION AND DISSEMINATION OF INFORMATION RELATING TO AIR NAVIGATION PERFORMANCE FOR THE SINGLE EUROPEAN SKY

Article 21

Collection and validation of data for performance review

1. In addition to the data already collected by the Commission through other Union instruments which may also be used for performance review, national authorities, air navigation service providers, airport operators, airport coordinators and air carriers shall ensure that the Commission is provided with the data referred to in Annex V in accordance with the requirements set out in that Annex.

⁽¹⁾ OJ L 271, 18.10.2011, p. 15.

⁽²⁾ OJ L 79, 19.3.2008, p. 1.

2. National authorities may delegate or reorganise in full or in part the task of providing the data between their national supervisory authorities, air navigation service providers, airport operators and airport coordinators, with a view to taking into account local specificities and existing reporting channels.

3. The data providers shall take the necessary measures to ensure the quality, validation and timely transmission of the data, including providing evidence of their quality checks and validation processes, explanations in response to specific requests from the Commission regarding the quality of the data and, where necessary, action plans to improve data quality. The data shall be provided free of charge, in electronic form where applicable, using the format specified by the Commission.

4. The Commission shall assess the quality and validate the data transmitted in accordance with paragraph 1. When the data does not allow proper use for performance review, the Commission may, in cooperation with Member States, and in particular with their national supervisory authorities, take appropriate measures to assess and improve the quality of the data.

5. For the purpose of this Regulation, data as referred to in paragraph 1 that is already provided to Eurocontrol shall be deemed to be provided to the Commission. Where data is not already provided to Eurocontrol, the Commission and Eurocontrol shall make the necessary arrangements to ensure that such data is made available to the Commission in line with the requirements laid down in paragraph 3.

6. Whenever significant new data requirements are identified or data of insufficient quality is to be expected, the Commission may carry out pilot studies to be completed on a voluntary basis by the Member States or stakeholders before new data requirements are introduced by amendment of this Regulation. Such pilot studies are carried out in order to assess the feasibility of collecting the relevant data, balancing the benefits of data availability against collection costs and the burden on respondents.

Article 22

Dissemination of information

1. The Commission shall disseminate information for the purpose of the objectives set out in Article 11 of Regulation (EC) No 549/2004 in accordance with Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents⁽¹⁾, in particular Article 4 thereof, and with Article 18 of Regulation (EC) No 550/2004.

2. The information in Article 3(3)(a) shall be made publicly available, in particular by electronic means. To this end, the Commission shall take a decision on the policy for the

handling, protection, confidentiality, and dissemination of the data collected for performance purposes in application of Article 21, and the associated intellectual property rights.

3. The Commission reports referred to in Article 18(4) shall be made publicly available and a reference to them shall be published in the *Official Journal of the European Union*. The Commission may decide to provide the parties concerned with other general information on a regular basis, in particular by electronic means.

4. The Union-wide targets referred to in Article 10 and a reference to the adopted performance plans referred to in Chapter III shall be made publicly available and published in the *Official Journal of the European Union*.

5. Individual access to specific information, such as validated data and statistics, shall be granted to the data provider directly related to the information and activities.

CHAPTER VI

FINAL PROVISIONS

Article 23

Exemptions

Where, in accordance with the procedures laid down in Article 3 of Implementing Regulation (EU) No 391/2013, it has been established that some or all terminal air navigation services and/or CNS, MET and AIS services of a Member State are subject to market conditions, and the Member State has decided under that Regulation not to calculate determined costs for these services, not to calculate and set terminal charges, and not to apply financial incentives to these services, cost-efficiency targets do not apply to these services.

Article 24

Appeal

Member States shall ensure that decisions taken pursuant to this Regulation are properly explained and are subject to an effective review and/or appeal procedure.

Article 25

Review of the scheme

By the end of each reference period, the Commission shall review the performance scheme, and in particular analyse its impact, effectiveness and scope, taking account of work carried out by ICAO in this field.

Article 26

Amendments to Regulation (EU) No 677/2011

Regulation (EU) No 677/2011 is amended as follows:

⁽¹⁾ OJ L 145, 31.5.2001, p. 43.

(1) recital 28 is deleted;

(2) in Article 5, paragraph 1 is replaced by the following:

‘1. To guide its long term perspective, the Network Manager shall develop, maintain and implement a Network Strategy plan, which shall be aligned with the reference period provided for in Article 8 of Commission Implementing Regulation (EU) No 390/2013 (*).

(*) OJ L 128, 9.5.2013, p. 1.’;

(3) in Article 5, paragraph 4 is replaced by the following:

‘4. The Network Strategy Plan shall be updated on a regular basis, at least 12 months before the beginning of each reference period.’;

(4) in Article 20, paragraph 3 is replaced by the following:

‘3. The Network Manager shall submit annually a report to the Commission and the Agency on the measures taken to fulfil its tasks. The report shall address individual network functions as well as the total network situation and shall be closely linked to the content of the Network Strategy Plan, the Network Operations Plan and the Network Performance Plan, referred to in Article 6(d) of Implementing Regulation (EU) No 390/2013. The Commission shall inform the Single Sky Committee.’;

(5) Annex IV shall be replaced by the following:

‘ANNEX IV

TEMPLATE FOR NETWORK STRATEGY PLAN

The Network Strategy Plan shall be based on the following structure:

1. INTRODUCTION

1.1. Scope of the Network Strategy Plan (geographical and time period)

1.2. Preparation of the plan and validation process

2. OVERALL CONTEXT AND REQUIREMENTS

2.1. Description of the current and planned network situation including ERND, ATFM, airports and scarce resources

2.2. Challenges and opportunities related to the time period of the plan (including traffic demand forecast and worldwide evolution)

2.3. Performance Objectives and business requirements as expressed by the different stakeholders and the Union-wide performance targets

3. STRATEGIC VISION

3.1. Description of the strategic way the network will develop and progress to successfully respond to the performance targets and business requirements

3.2. Compliance with the performance scheme

3.3. Compliance with the European ATM master plan

4. STRATEGIC OBJECTIVES

4.1. Description of the Network strategic objectives:

(a) including the cooperative aspects of the participating operational stakeholders in terms of roles and responsibilities;

(b) indicating how the strategic objectives will answer the requirements;

(c) identifying how progress towards these objectives will be measured;

(d) indicating how the strategic objectives will impact the industry and other concerned areas.

5. STRATEGIC PLANNING

5.1. Description of the short/medium term planning:

(a) the priorities for each of the strategic objectives;

- (b) the implementation of each of the strategic objectives in terms of required deployment of technology, architectural impact, human aspects, involved cost, benefits as well as the necessary governance, resources and regulation;
- (c) the required operational stakeholder participation on each element of the plan including their roles and responsibilities;
- (d) the agreed level of involvement of the Network Manager to support the implementation of each element of the plan for each individual function.

5.2. Description of the long term planning:

- (a) the intent to reach each of the strategic objectives in terms of required technology and corresponding R & D aspects, architectural impact, human aspects, business case, governance required, and regulation required as well as the associated safety and economic justification for these investments;
- (b) the required operational stakeholder participation on each element of the plan including their roles and responsibilities.

6. RISK ASSESSMENT

6.1. Description of the risks associated with the implementation of the plan

6.2. Description of the monitoring process (including potential deviation from initial objectives)

7. RECOMMENDATIONS

7.1. Identification of the actions to be taken by the Union and Member States to support the implementation of the plan.’

Article 27

Entry into force

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

2. This Regulation shall apply from the second reference period as defined in Article 8 and during that period. With regards to the application of the performance scheme, in order to allow the adoption of Union-wide targets in application of Article 10(2) before the beginning of the second reference period and the preparation and adoption of performance plans in accordance with the provisions of this

Regulation, Article 1(3) and (4), Article 3(3)(i) and (n), Articles 5 and 6, Article 9(3) and (4), Article 26, Chapter II, Chapter III, as well as Annexes I, II, III, IV and V shall apply from the entry into force of this Regulation.

Article 28

Repeal

Commission Regulation (EU) No 691/2010, Article 26 of Commission Regulation (EU) No 677/2011 and Commission Implementing Regulation (EU) No 1216/2011 shall be repealed with effect from 1 January 2015, without prejudice to the Member States’ obligation to implement the performance scheme during the first reference period as defined in Article 8.

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

Done at Brussels, 3 May 2013.

For the Commission

The President

José Manuel BARROSO

ANNEX I

KEY PERFORMANCE INDICATORS (KPI) AND PERFORMANCE INDICATORS (PI)

SECTION 1

For Union-wide target setting and performance monitoring at Union level

1. SAFETY

1.1. Key Performance Indicators

- (a) The minimum level of the effectiveness of safety management as defined in Section 2, point 1.1(a).
- (b) The percentage of application of the severity classification based on the Risk Analysis Tool (RAT) methodology to the reporting of, as a minimum, three categories of occurrences: separation minima infringements, runway incursions and ATM-specific occurrences at all air traffic services units as defined in Section 2, point 1.1(b).

2. ENVIRONMENT

2.1. Key Performance Indicators

- (a) The average horizontal *en route* flight efficiency of the actual trajectory, defined as follows:
 - (i) the indicator is the comparison between the length of the *en route* part of the actual trajectory derived from surveillance data and the corresponding portion of the great circle distance, summed over all IFR flights within or traversing the European airspace;
 - (ii) '*en route*' refers to the distance flown outside a circle of 40 NM around the airports;
 - (iii) where a flight departs from or arrives at a place outside the European airspace, only the part inside European airspace is considered.
- (b) The average horizontal *en route* flight efficiency of the last filed flight plan trajectory, defined as follows:
 - (i) the difference between the length of the *en route* part of the last filed flight plan trajectory and the corresponding portion of the great circle distance, summed over all IFR flights within or traversing the European airspace;
 - (ii) '*en route*' refers to the distance flown outside a circle of 40 NM around the airports;
 - (iii) where a flight departs from or arrives at a place outside the European airspace, only the part inside European airspace is considered.

2.2. Performance Indicators

- (a) The effectiveness of booking procedures for flexible use of airspace (FUA), defined as follows:
 - (i) the indicator is the ratio of time that the airspace was allocated for reservation or segregation from general air traffic, and the time that the airspace was used for the activity requiring such segregation or reservation;
 - (ii) the indicator is calculated separately for airspace allocations on a pre-tactical and tactical basis and including all allocations notified to the Network Manager.
- (b) The rate of planning of conditional routes (CDRs) defined as the ratio of aircraft filing flight plans via CDRs and the number of aircraft that could have planned them.
- (c) The effective use of CDRs defined as the ratio of aircraft using CDRs and the number of aircraft that could have planned them.

3. CAPACITY

3.1. Key Performance Indicator

The average minutes of *en route* ATFM (Air Traffic Flow Management) delay per flight attributable to air navigation services, defined as follows:

- (i) the *en route* ATFM delay is the delay calculated by the central unit of ATFM as defined in Commission Regulation (EU) No 255/2010 laying down common rules on air traffic flow management ⁽¹⁾ and expressed as the difference between the estimated take-off time requested by the aircraft operator in the last submitted flight plan and the calculated take-off time allocated by the central unit of ATFM;

⁽¹⁾ OJ L 80, 26.3.2010, p. 10.

(ii) the indicator covers all IFR flights within European airspace and all ATFM delay causes, excluding exceptional events;

(iii) the indicator is calculated for the whole calendar year and for each year of the reference period.

3.2. Performance Indicator

The average minutes of arrival ATFM delay per flight attributable to terminal and airport air navigation services and caused by landing restrictions at the destination airport, defined as follows:

(i) the indicator is the average generated arrival ATFM delay per inbound IFR flight;

(ii) the indicator includes all IFR flights landing at the destination airport and covers all ATFM delay causes, excluding exceptional events;

(iii) the indicator is calculated for the whole calendar year and for each year of the reference period.

4. COST-EFFICIENCY

4.1. Key Performance Indicators

(a) The average Union wide determined unit cost (DUC) for *en route* air navigation services, defined as follows:

(i) the indicator is the ratio between the *en route* determined costs and the *en route* forecast traffic, expressed in en-route service units, expected during the period at Union level, as contained in the Commission's assumptions for establishing the Union wide targets in application of Article 10(5);

(ii) the indicator is expressed in euro and in real terms;

(iii) the indicator is provided for each year of the reference period.

(b) The average Union wide determined unit cost (DUC) for terminal air navigation services, defined as follows:

(i) the indicator is the result of the ratio between the determined costs and the forecast traffic, expressed in terminal service units, as contained in the Commission's assumptions for establishing the Union wide targets in application of Article 10(5);

(ii) the indicator is expressed in euro and in real terms;

(iii) the indicator is provided for each year of the reference period;

(iv) the indicator applies from the beginning of the third year of the second reference period, subject to the decision referred to in Article 10(3).

4.2. Performance Indicator

The costs of Eurocontrol and in particular their evolution as compared with the evolution of the KPI set out in point 4.1(a). To this effect, Member States shall ensure that Eurocontrol communicates to the Commission its adopted budget and actual budget and cost-base during the reference period, as well as the evolution of the unit cost resulting from the ratio between the adopted cost-base and foreseen traffic evolution, with a breakdown showing the evolution of its various components and identifying separately the various service provision activities.

SECTION 2

For local target setting and performance monitoring at local level

1. SAFETY

1.1. Key Performance Indicators

(a) The effectiveness of safety management, with regard to Member States and their national supervisory authorities and air navigation service providers, certified to provide air traffic services or communication, navigation and surveillance services. This KPI shall be measured by the level of implementation of the following Management Objectives:

(i) Safety policy and objectives;

(ii) Safety risk management;

(iii) Safety assurance;

(iv) Safety promotion;

- (v) Safety Culture.
- (b) The application of the severity classification based on the Risk Analysis Tool (RAT) methodology to the reporting of, as a minimum, separation minima infringements, runway incursions and ATM-specific occurrences at all air traffic services units. When reporting the above occurrences Member States and air navigation service providers shall use the following severity classes:
 - (i) Serious incident;
 - (ii) Major incident;
 - (iii) Significant incident;
 - (iv) No safety effect;
 - (v) Not determined; for example insufficient information available, or inconclusive or conflicting evidence precluded such determination.

Reporting on the application of the method shall be done for individual occurrences.

- (c) The reporting by the Member States and their air navigation service providers of the level of presence and corresponding level of absence of just culture.

For the purpose of these indicators, local means at functional airspace block level with an indication for monitoring purposes of the contribution at national level.

1.2. Performance Indicators

- (a) The application by the air navigation service providers of automated safety data recording systems where available, which shall include, as a minimum monitoring of separation minima infringements and runway incursions.
- (b) The reporting by the Member States and air navigation service providers on the level of occurrence reporting, on an annual basis, aiming at measuring the level of reporting and addressing the issue of improvement of reporting culture.
- (c) The number of, as a minimum, separation minima infringements, runway incursions, airspace infringements, and ATM-specific occurrences at all air traffic services units.

For the purpose of these indicators, local means at functional airspace block level with an indication for monitoring purposes of the contribution at national level.

2. ENVIRONMENT

2.1. Key Performance Indicator

The average horizontal *en route* flight efficiency of the actual trajectory, defined as follows:

- (i) the indicator is the comparison between the length of the *en route* part of the actual trajectory derived from surveillance data and the achieved distance, summed over all IFR flights within or traversing the local airspace;
- (ii) '*en route*' refers to the distance flown outside a circle of 40NM around the airports;
- (iii) where a flight departs from or arrives at a place outside the local airspace, only the part inside the local airspace is considered;
- (iv) 'achieved distance' is a function of the position of the entry and exit points of the flight into and out of the local airspace. Achieved distance represents the contribution that these points make to the distance used in the Union-wide indicator. The sum of these distances over all traversed local airspaces equals the distance used in the Union-wide indicator.

For the purpose of this indicator, local means at functional airspace block level.

2.2. Performance Indicators

- (a) The additional time in the taxi-out phase, defined as follows:
 - (i) the indicator is the difference between the actual taxi-out time and the unimpeded time based on taxi-out times in low periods of traffic;
 - (ii) the indicator is expressed in minutes per departure for the whole calendar year.
- (b) The additional time in terminal airspace, defined as follows:
 - (i) the indicator is the difference between the ASMA (Arrival Sequencing and Metering Area) transit time and the unimpeded time based on ASMA transit times in low periods of traffic;
 - (ii) the indicator is expressed in minutes per arrival for the whole calendar year;
 - (iii) ASMA is defined as a virtual cylinder with a radius of 40 NM around the arrival airport.

(c) The indicators as defined in Section 1, point 2.2.

For the purpose of indicators (a) and (b), local means at national level with a breakdown at airport level. For the purpose of indicator (c), local means at national level.

3. CAPACITY

3.1. Key Performance Indicators

(a) The average minutes of *en route* ATFM delay per flight, defined as follows:

- (i) the *en route* ATFM delay is the delay calculated by the central unit of ATFM as defined in Regulation (EU) No 255/2010 and expressed as the difference between the estimated take-off time requested by the aircraft operator in the last submitted flight plan and the calculated take-off time allocated by the central unit of ATFM;
- (ii) the indicator covers all IFR flights traversing the local airspace and all ATFM delay causes, excluding exceptional events;
- (iii) the indicator is calculated for the whole calendar year and for each year of the reference period.

For the purpose of this indicator, local means at functional airspace block level with a breakdown monitored for reasons of transparency at the most appropriate level.

(b) The average minutes of arrival ATFM delay per flight attributable to terminal and airport air navigation services and caused by landing restrictions at the destination airport, defined as follows:

- (i) the indicator is the average generated arrival ATFM delay per inbound IFR flight;
- (ii) the indicator covers all IFR flights landing at the destination airport and all ATFM delay causes, excluding exceptional events;
- (iii) the indicator is calculated for the whole calendar year and for each year of the reference period.

For the purpose of this indicator, local means at national level with a breakdown at airport level for monitoring purposes.

3.2. Performance Indicators

(a) The adherence to ATFM slots as required by Article 11 of Regulation (EU) No 255/2010.

(b) The average minutes of air traffic control pre-departure delay per flight caused by take-off restrictions at the departure airport, defined as follows:

- (i) the indicator is the average air traffic control pre-departure delay per outbound IFR flight;
- (ii) the indicator includes all IFR flights taking off at the departure airport and covers delays in start up due to air traffic control constraints when the aircraft is ready to leave the departure stand;
- (iii) the indicator is calculated for the whole calendar year and for each year of the reference period.

For the purpose of these indicators, local means at national level with a breakdown at airport level for monitoring purposes.

4. COST-EFFICIENCY

4.1. Key Performance Indicators

(a) The determined unit cost (DUC) for *en route* air navigation services, defined as follows:

- (i) the indicator is the ratio between the *en route* determined costs and the forecast traffic in the charging zone, expressed in *en route* service units, expected during the period at local level, contained in the performance plans in accordance with Article 11(3)(a) and (b);
- (ii) the indicator is expressed in real terms and in national currency;
- (iii) the indicator is provided for each year of the reference period.

(b) The determined unit cost(s) (DUC) for terminal air navigation services, defined as follows:

- (i) the indicator is the result of the ratio between the determined costs and the forecast traffic, expressed in terminal service units, contained in the performance plans in accordance with Article 11(3)(a) and (b);

(ii) the indicator is expressed in real terms and in national currency;

(iii) the indicator is provided for each year of the reference period.

For the purpose of these two indicators, local means at charging zone level.

ANNEX II

TEMPLATE FOR PERFORMANCE PLANS

The performance plans shall be based on the following structure:

1. INTRODUCTION

- 1.1. Description of the situation (scope of the plan, list of air navigation service providers covered, etc.).
- 1.2. Description of the macroeconomic scenario for the reference period including overall assumptions (traffic forecast, etc.)
- 1.3. Description of the outcome of the stakeholder consultation in order to prepare the performance plan and the agreed compromises as well as the points of disagreement and the reasons for disagreement.
- 1.4. Description of the actions taken by air navigation service providers to implement the Network Strategy Plan at functional airspace block level and other guiding principles for the operation of the functional airspace block in the long term perspective..
- 1.5. List of airports submitted to the performance scheme in application of Article 1 of the Regulation, with their average number of IFR air transport movements.
- 1.6. List of exempted airports pursuant to Article 1(5) of Implementing Regulation (EU) No 391/2013 together with their average number of IFR air transport movements.

2. INVESTMENT

- 2.1. Description and justification of the cost, nature and contribution to achieving the performance targets of investments in new ATM systems and major overhauls of existing ATM systems, including their relevance and coherence with the European ATM Master Plan, the common projects referred to in Article 15a of Regulation (EC) No 550/2004, and, as appropriate, the Network Strategy Plan.
- 2.2. The description and justification referred to in point 2.1 shall in particular:
 - (i) relate the amount of the investments, for which description and justification is given following point 2.1, to the total amount of investments;
 - (ii) differentiate between investments in new systems, overhaul of existing systems and replacement investments;
 - (iii) refer each investment in new ATM systems and major overhaul of existing ATM systems to the European ATM Master Plan, the common projects referred to in Article 15a of Regulation (EC) No 550/2004, and, as appropriate, the Network Strategy Plan;
 - (iv) detail the synergies achieved at functional airspace block level or, if appropriate, with other Member States or functional airspace blocks, in particular in terms of common infrastructure and common procurement;
 - (v) detail the benefits expected from these investments in terms of performance across the four key performance areas, allocating them between the en route and terminal/airport phases of flight, and the date as from which benefits are expected;
 - (vi) provide information on the decision-making process underpinning the investment, such as the existence of a documented cost-benefit analysis, the holding of user consultation, its results and any dissenting views expressed.

3. PERFORMANCE TARGETS AT LOCAL LEVEL

- 3.1. Performance targets in each key performance area, set by reference to each key performance indicator as set out in Annex I, Section 2, for the entire reference period, with annual values to be used for monitoring and incentive purposes:
 - (a) Safety
 - (i) level of effectiveness of safety management: local targets for each year of the reference period;
 - (ii) application of the severity classification based on the Risk Analysis Tool (RAT) methodology: local targets for each year of the reference period (percentage);
 - (iii) just culture: local targets for the last year of the reference period.

(b) Environment

- (i) description of the process to improve route design;
- (ii) average horizontal *en route* flight efficiency of the actual trajectory.

(c) Capacity

- (i) minutes of average *en route* ATFM delay per flight;
- (ii) minutes of average terminal ATFM arrival delay per flight;
- (iii) the capacity plan established by the air navigation service provider(s).

(d) Cost-efficiency

- (i) determined costs for *en route* and terminal air navigation services set in accordance with the provisions of Article 15(2)(a) and (b) of Regulation (EC) No 550/2004 and in application of the provisions of Implementing Regulation (EU) No 391/2013 for each year of the reference period;
- (ii) *en route* and terminal service units forecast for each year of the reference period;
- (iii) as a result, the determined unit costs for the reference period;
- (iv) description and justification of the return on equity of the air navigation service providers concerned, as well as on the gearing ratio and on the level/composition of the asset base used to calculate the cost of capital comprised in the determined costs;
- (v) description and explanation of the carry-overs from the years preceding the reference period;
- (vi) description of economic assumptions, including:
 - inflation assumptions used in the plan as compared to an international source such as the IMF (International Monetary Fund) Consumer Price Index (CPI) for the forecasts and Eurostat Harmonised Index of Consumer Price for the actuals. Justification of any deviation from these sources,
 - assumptions underlying the calculation of pension costs comprised in the determined costs, including a description on the relevant national pension regulations and pension accounting regulations in place and on which the assumptions are based, as well as information whether changes of these regulations are anticipated,
 - interest rate assumptions for loans financing the provision of air navigation services, including relevant information on loans (amounts, duration, etc.) and explanation for the (weighted) average interest on debt used to calculate the cost of capital pre tax rate and the cost of capital comprised in the determined costs,
 - adjustments beyond the provisions of the International Accounting Standards;
- (vii) if applicable, description in respect to the previous reference period of relevant events and circumstances set out in Article 14(2)(a) of Implementing Regulation (EU) No 391/2013 using the criteria set out in Article 14(2)(b) of Implementing Regulation (EU) No 391/2013 including an assessment of the level, composition and justification of costs exempt from the application of Article 14(1)(a) and (b) of Implementing Regulation (EU) No 391/2013;
- (viii) if applicable, a description of any significant restructuring planned during the reference period including the level of restructuring costs and a justification for these costs in relation to the net benefits to the airspace users over time;
- (ix) if applicable, restructuring costs approved from previous reference periods to be recovered.

3.2. Description and explanation of the consistency of the performance targets with the relevant Union-wide performance targets. When there is no Union-wide performance target, description and explanation of the targets within the plan and how they contribute to the improvement of the performance of the European ATM network.

3.3. Description and explanation of the interdependencies and trade-offs between the key performance areas, including the assumptions used to assess the trade-offs.

3.4. Contribution of each air navigation service provider concerned to the achievement of the performance targets set for the functional airspace block in accordance with Article 5(2)(c)(ii).

4. INCENTIVE SCHEMES

- 4.1. Description and explanation of the incentive schemes to be applied on air navigation service providers.

5. MILITARY DIMENSION OF THE PLAN

Description of the civil-military dimension of the plan describing the performance of FUA application in order to increase capacity with due regard to military mission effectiveness, and if deemed appropriate, relevant performance indicators and targets consistent with the indicators and targets of the performance plan.

6. ANALYSIS OF SENSITIVITY AND COMPARISON WITH THE PREVIOUS PERFORMANCE PLAN

- 6.1. Sensitivity to external assumptions.

- 6.2. Comparison with previous performance plan.

7. IMPLEMENTATION OF THE PERFORMANCE PLAN

Description of the measures put in place by the national supervisory authorities to achieve the performance targets, such as:

- (i) monitoring mechanisms to ensure that the ANS safety programmes and business plans are implemented;
 - (ii) measures to monitor and report on the implementation of the performance plans including how to address the situation if targets are not reached during the reference period.
-

ANNEX III

TEMPLATE FOR THE NETWORK PERFORMANCE PLAN

The performance plan for the Network Manager shall be based on the following structure:

1. INTRODUCTION

- 1.1. Description of the situation (scope of the plan, functions covered, etc.)
- 1.2. Description of the macroeconomic scenario for the reference period including overall assumptions (traffic forecast, etc.)
- 1.3. Description of the consistency with the Network Strategy Plan
- 1.4. Description of the outcome of the stakeholder consultation to prepare the performance plan (main issues raised by the participants and if possible agreed compromises)

2. PERFORMANCE TARGETS

- 2.1. Description of the key performance indicators in each relevant key performance area
- 2.2. Performance targets in each relevant key performance area, set by reference to each relevant key performance indicator, for the entire reference period, with annual values to be used for monitoring and incentive purposes
- 2.3. Description and explanation of the contribution and impact of the performance targets on the European Union-wide performance targets
- 2.4. Description of the contribution and impact of the performance targets on functional airspace blocks

3. CONTRIBUTION OF EACH FUNCTION

- 3.1. Individual performance targets for each function (ATFM, ERND, SSR transponder codes, frequencies)

4. MILITARY DIMENSION

- 4.1. Description of the civil-military dimension of the plan describing the performance of flexible use of airspace application in order to increase capacity with due regard to military operation effectiveness, and if deemed appropriate, relevant performance indicators and targets consistent with the indicators and targets of the performance plan

5. ANALYSIS OF SENSITIVITY AND COMPARISON WITH THE PREVIOUS PERFORMANCE PLAN

- 5.1. Sensitivity to external assumptions
- 5.2. Comparison with the previous performance plan.

6. IMPLEMENTATION OF THE PERFORMANCE PLAN

- 6.1. Description of the measures put in place to achieve the performance targets, such as:
 - monitoring mechanisms to ensure that the safety activities and business plans are implemented,
 - measures to monitor and report on the implementation of the performance plans including how to address the situation if targets are not met during the reference period.

ANNEX IV

PRINCIPLES FOR ASSESSING PERFORMANCE PLANS AND TARGETS

The Commission shall use the following assessment criteria:

1. GENERAL CRITERIA

- (a) Compliance with the requirements relating to the preparation and adoption of the performance plan and, in particular, assessment of the justifications provided in the performance plan;
- (b) Factual analysis taking into account the overall situation of each individual State including the most recent economic developments and traffic forecast;
- (c) The level of performance at the beginning of the reference period and the resulting scope for further improvement;
- (d) The level of performance achieved in the previous reference period;
- (e) The relevance of investments and capital expenditure as regards the European ATM Master Plan, the common projects referred to in Article 15a of Regulation (EC) No 550/2004, and, as appropriate, the Network Strategy Plan as well as synergies achieved at functional airspace block or regional level;
- (f) The results of the stakeholder consultation on the proposed targets.

2. SAFETY

- (a) Comparison of the level of effectiveness of safety management at local level with the Union-wide target;
- (b) Comparison of the results of application of the severity classification based on the Risk Analysis Tool (RAT) methodology at local level with the Union-wide target;
- (c) The level of presence of just culture at local level.

3. ENVIRONMENT

Average horizontal *en route* flight efficiency of the actual trajectory:

- (a) comparison with historical performance achieved in previous years;
- (b) comparison with a reference value based on information provided by the Network Manager;
- (c) consistency with the European Route Network Improvement Plan developed by the Network Manager.

4. CAPACITY

En route delay level. Comparison of the expected level of *en route* ATFM delay used in the performance plans with:

- (a) a reference value based on information from the Network Operations Plan of the Network Manager;
- (b) the capacity plan established by the *en route* air navigation service provider(s) as reflected in the Network Operations Plan of the Network Manager.

Average arrival ATFM delay at national level. Assessment of the justification provided in the performance plans and, in particular:

- (a) comparison with the historical performance achieved in the last five years;
- (b) contribution of individual airports to the local target and comparison of performance with other similar airports;
- (c) operational benefits expected from planned initiatives.

5. COST-EFFICIENCY

- (a) Determined unit cost trend: assessment as to whether the submitted determined unit costs are expected to develop in line with the Union-wide cost-efficiency target and whether they contribute in an adequate manner to achieving that target over the entire reference period as well as for each year individually, taking into account restructuring costs as appropriate;

- (b) Terminal unit cost trend: assessment as to whether the submitted determined unit costs are expected to develop in line with the Union-wide cost-efficiency target and whether they contribute in an adequate manner to achieving that target during the entire reference period as well as for each year individually. In addition, the following criteria are used for the assessment:
- (i) the consistency with the development of *en route* determined unit costs, considering all the commonalities between these costs;
 - (ii) the consistency with the assumptions used for *en route* cost-efficiency target setting (such as inflation, economic assumptions, traffic trends);
 - (iii) the efforts planned compared to historical cost trends for terminal ANS;
 - (iv) the trends in overall gate-to-gate ANS determined costs;
 - (v) description and justification of any change in the allocation of costs between *en route* and terminal ANS, as compared to the previous reference period and over the current reference period; and
 - (vi) any particular local circumstances;
- (c) Determined unit cost level: comparison of the submitted local unit costs with the average unit costs of Member States or FABs having a similar operational and economic environment, as defined by the Commission in application of Article 10(5);
- (d) Cost of capital:
- (i) the level/composition of the asset base used to calculate the cost of capital;
 - (ii) the cost of capital pre tax rate comprising the interest rate on debt and the return on equity; and
 - (iii) the return on equity of the air navigation service providers;
- (e) The level/composition of costs incurred following Article 6(2)(a) and (b) of Implementing Regulation (EU) No 391/2013 and included in the determined costs;
- (f) Traffic forecast assumptions: comparison of local service unit forecasts used in the performance plan with the Eurocontrol Statistics and Forecast Service (STATFOR) traffic forecasts available three months before submission of the performance plan;
- (g) Economic assumptions:
- (i) Verification that the inflation assumptions used in the performance plan are in line with the IMF (International Monetary Fund) CPI reference forecast and verification of the justifications given for any deviations;
 - (ii) Verification of the description and justification of the assumptions underlying the calculation of pension costs comprised in the determined costs;
 - (iii) Verification of the description of the relevant national pension regulations and pension accounting regulations in place and on which the pension assumptions are based;
 - (iv) Verification of the description and justification of the interest rate assumptions for loans financing the provision of air navigation services, including relevant information on loans (amounts, duration, etc.) and reconciliation with the (weighted) average interest on debt used to calculate the cost of capital pre tax rate and the cost of capital comprised in the determined costs;
 - (v) Verification of the description and justification of possible adjustments beyond the provisions of the International Accounting Standards;
- (h) The level, composition and justification of costs exempt from the application of Article 14(1)(a) and (b) of Implementing Regulation (EU) No 391/2013;
- (i) If applicable, upon completion of restructuring, the delivery of a net benefit to airspace users over time in comparison to recovered restructuring costs.
-

ANNEX V

LIST OF DATA TO BE PROVIDED FOR THE PURPOSE OF THIS REGULATION

For the purpose of performance review, the following data shall be provided or made available:

1. BY NATIONAL SUPERVISORY AUTHORITIES**1.1. Data-set specification**

National supervisory authorities shall provide the following data:

- (a) information required to comply with the safety key performance indicators referred to in Annex I;

In addition, national supervisory authorities shall ensure that the following data is made available:

- (b) data used and calculated by the central unit of ATFM as defined in Regulation (EU) No 255/2010 on ATFM such as flight plans for general air traffic under IFR rules, actual routing, surveillance data based on 30 seconds reporting interval, *en route* and airport ATFM delays, exemptions from ATFM measures, respect of ATFM slots, frequency of conditional route usage;
- (c) ATM-related safety occurrences;
- (d) information on safety recommendations and corrective actions taken on the basis of ATM-related incident analysis/investigation in accordance with Regulation (EU) No 996/2010 of the European Parliament and of the Council ⁽¹⁾ on accident investigation and Directive 2003/42/EC ⁽²⁾ on occurrence reporting in civil aviation;
- (e) information on the elements in place to promote the application of a just culture;
- (f) data in support of tasks referred to in Article 4(1)(m) and (n) of Commission Regulation (EC) No 2150/2005 laying down common rules for the flexible use of airspace (FUA) ⁽³⁾;
- (g) data in support of tasks referred to in paragraph 8 of Annex V to Commission Regulation (EU) No 677/2011 laying down detailed rules for the implementation of air traffic management (ATM) network functions.

National supervisory authorities shall ensure that the use of a common list of causal/contributing factors for the occurrence analysis is mandatory.

National supervisory authorities shall collect and make available the following:

- (h) information collected by air navigation service providers through automated safety data recording systems where available;
- (i) trends in, at the minimum, separation minima infringements, runway incursions, airspace infringements and ATM-specific occurrences at all air traffic services units;
- (j) information on how the FUA concept is applied by the national/FAB authorities to provide the optimum benefit for both civil and military airspace users.

1.2. Periodicity and deadlines for data provision

Data referred to in point 1.1(a), (c), (d), (e), (f), (h) and (i) shall be provided on an annual basis. Before 1 February of each year, the national supervisory authorities shall report to EASA the yearly measurement of the questionnaires on effectiveness of safety management (point 1.1(a)) and just culture (point 1.1(e)) for the previous year. If there are any changes in the yearly measurement of the KPIs, the national supervisory authorities shall present those changes before the next annual report is due.

Data referred to in point 1.1(b) and (g) shall be made available on a monthly basis.

Before 1 February of each year, the national supervisory authorities shall submit their yearly survey on the application of the FUA concept, as referred to in point 1.1(j), for the previous year.

⁽¹⁾ OJ L 319, 12.12.1994, p. 14.

⁽²⁾ OJ L 167, 4.7.2003, p. 23.

⁽³⁾ OJ L 342, 24.12.2005, p. 20.

2. BY AIR NAVIGATION SERVICE PROVIDERS

This section applies to air navigation service providers providing services as referred to in Article 1(2). In individual cases, national authorities may include air navigation service providers below the limit set in Article 1(3). They shall inform the Commission accordingly.

2.1. Data set specification

Air navigation service providers shall make available the following:

- (a) data referred to in the Eurocontrol Specification titled 'EUROCONTROL Specification for Economic Information Disclosure', Edition 2.6 of 31 December 2008 with the reference EUROCONTROL-SPEC-0117 for the provision of data up to, and including, year 2013 and Edition 3.0 of 4 December 2012 from year 2014 onwards;
- (b) annual reports and the performance-related part of the business plans and the annual plan established by the air navigation service provider in accordance with Section 2.2 and 9 of Annex I to Regulation (EU) No 1035/2011;
- (c) their investment plan for the reference period;
- (d) information required to comply with the safety KPIs referred to in Annex I, Section 2, point 1.1(a);
- (e) information on the elements in place to promote the application of a just culture;

Air navigation service providers shall collect and provide the following data:

- (f) information collected through automated safety data recording systems where available;
- (g) trends in, at the minimum, separation minima infringements, runway incursions, airspace infringements, and ATM-specific occurrences at all air traffic services units.

2.2. Periodicity and deadlines for data provision

Data for year n referred to in point 2.1(a) shall be provided on an annual basis before 15 of July of year $n + 1$, except for forward-looking data, which shall be provided by 1 November of year $n + 1$.

Data referred to in point 2.1(b), (c), (d), (e) and (f) shall be provided on an annual basis.

Before 1 February of each year, air navigation service providers shall report to EASA, the yearly measurement of the questionnaires on effectiveness of safety management (point 1.1(d)) and just culture (point 1.1(e)), for the previous year. If any changes in the yearly measurement of the KPIs occur the national supervisory authorities shall present those changes before the next annual report is due.

Data referred to in point 2.1(g), shall be on provided on an annual basis.

3. BY AIRPORT OPERATORS

This section applies to airport operators falling within the scope of Article 1 of this Regulation.

3.1. Definitions

The following definitions shall apply for the purpose of this specific Annex:

- (a) 'airport identification' means the description of the airport using the standard ICAO four-letter code as defined in ICAO Doc. 7910;
- (b) 'coordination parameters' means the coordination parameters defined in Regulation (EEC) No 95/93;
- (c) 'airport declared capacity' means the coordination parameters expressed as the maximum number of slots per unit of time (block period) that can be allocated by the coordinator;
- (d) 'aircraft registration' means the alphanumerical characters corresponding to the actual registration of the aircraft;
- (e) 'aircraft type' means an aircraft type designator (up to four characters) as indicated in ICAO Doc 8643;
- (f) 'flight identifier' means a group of alphanumeric characters used to identify a flight. Item 7 of the ICAO flight plan;

- (g) 'encoded aerodrome of departure' and 'Encoded aerodrome of destination' mean the code of the airport using the ICAO four-letter or the IATA three-letter airport designator;
- (h) 'out-off-on-in time stamps' means the following data,
 - (i) actual off-block time;
 - (ii) actual take-off time;
 - (iii) actual landing time;
 - (iv) actual on-block time;
- (i) 'scheduled time of departure (off-block)' means date and time when a flight is scheduled to depart from the departure stand;
- (j) 'actual off-block time' means the date and time the aircraft has vacated the parking position (pushed back or on its own power);
- (k) 'actual take off time' means the date and time that an aircraft has taken off from the runway (wheels-up);
- (l) 'actual landing time' means the date and time when the aircraft has landed (touch down);
- (m) 'scheduled time of arrival (on-block)' means the date and time when a flight is scheduled to arrive at the arrival stand;
- (n) 'actual on-block time' means the date and time when the parking brakes have been engaged at the arrival stand;
- (o) 'flight rules' means the rules used in conducting the flight. 'IFR' for aircraft flying according to instrument flight rules, as defined in Annex 2 of the Chicago Convention or 'VFR' for aircraft flying according to visual flight rules as defined in the same Annex. 'Operational Air Traffic (OAT)' refers to State aircraft not following the rules defined in Annex 2 of the Chicago Convention. (Item 8 of the ICAO flight plan);
- (p) 'flight type' means the type of flight as defined in Appendix 2 of ICAO Doc 4444 (15th Edition — June 2007);
- (q) 'airport arrival slot' and 'airport departure slot' mean an airport slot assigned either to an arrival or departure flight as defined in Regulation (EEC) No 95/93;
- (r) 'arrival runway designator' and 'departure runway designator' mean the ICAO designator of the runway used for landing and for take-off (e.g. 10L);
- (s) 'arrival stand' means the designator of the first parking position where the aircraft was parked upon arrival;
- (t) 'departure stand' means the designator of the last parking position where the aircraft was parked before departing from the airport;
- (u) 'delay causes' means the standard IATA delay codes as defined in Section F of CODA Digest Annual 2011 'Delays to Air Transport in Europe' ⁽¹⁾ with the duration of the delay. Where several causes may be attributable to flight delays, a list of those causes shall be provided;
- (v) 'de-icing or anti-icing information' means indications as to whether de-icing or anti-icing operations occurred and, if so, where (before leaving the departure stand or in a remote position after departing the stand, i.e. after off-block);
- (w) 'operational cancellation' means an arrival or departure of a scheduled flight to which the following conditions apply:
 - (i) the flight received an airport slot; and

⁽¹⁾ <http://www.eurocontrol.int/documents/coda-digest-annual-2011>

- (ii) the flight was confirmed by the air carrier the day before operations and/or it appeared in the daily list of flight schedules produced by the airport operator the day before operations; but
- (iii) the actual landing or take-off never occurred;
- (x) 'actual time of cancellation' means the actual date and time when an arrival or departure of a scheduled flight was cancelled.

3.2. Data set specification

3.2.1. Airport operators shall provide the following data:

- (a) airport identification;
- (b) airport declared capacity;
- (c) all coordination parameters pertinent to air navigation services;
- (d) planned level of quality of service (delay, punctuality, etc.) associated to the airport capacity declaration, when established;
- (e) detailed description of the indicators, when established, which are used to establish the planned level of quality of service.

3.2.2. Airport operators shall provide the following operational data for each flight landing or taking-off:

- (a) aircraft registration;
- (b) aircraft type;
- (c) flight identifier;
- (d) encoded aerodrome of departure and of destination;
- (e) scheduled time of departure (off-block);
- (f) scheduled time of arrival (on-block);
- (g) out-off-on-in time stamps;
- (h) flight rules and flight type;
- (i) airport arrival and departure slot, where available;
- (j) arrival and departure runway designator;
- (k) arrival and departure stand;
- (l) delay causes, where available (only for departing flights);
- (m) de-icing or anti-icing information, where available.

3.2.3. Airport operators shall provide the following operational data for each operational cancellation:

- (a) flight identifier;
- (b) aircraft type;
- (c) scheduled time of departure (off-block);
- (d) scheduled time of arrival (on-block);
- (e) scheduled airport of departure and of destination;
- (f) airport arrival and departure slots where available;
- (g) reason for cancellation;
- (h) actual time of cancellation.

3.2.4. Airport operators may provide:

- (a) voluntary reports on degradation or disruption of ANS at airports;
- (b) voluntary reports on ANS safety occurrences;
- (c) voluntary reports on terminal capacity shortfalls;

(d) voluntary reports on consultation meetings with ANSPs and States.

3.2.5. Airport operators shall collect and provide information collected through automated safety data recording systems where available, as a minimum on runway incursions.

3.3. Periodicity and deadlines for data provision

Data referred to in point 3.2.1 shall be provided twice a year, in accordance with the timescale set out in Article 6 of Regulation (EEC) No 95/93.

When data referred to in points 3.2.2 and 3.2.3 is provided, it shall be provided on a monthly basis within one month following the end of the flight month.

When data referred to in point 3.2.4 is provided, it shall be provided on an annual basis.

Reports referred to in point 3.2.4 may be provided at any time.

4. BY AIRPORT COORDINATORS

4.1. Data-set specification

Airport coordinators shall provide the data referred to in Article 4(8) of Regulation (EEC) No 95/93.

4.2. Periodicity and deadlines for data provision

Data shall be made available twice a year, in accordance with the timescale set out in Article 6 of Regulation (EEC) No 95/93.

5. BY AIR TRANSPORT OPERATORS

This section applies to air transport operators which operate more than 35 000 flights per year in European airspace, calculated as the average over the previous three years.

5.1. Definitions

5.1.1. The same definitions as in point 3.1 shall apply for the purpose of this specific Annex and in addition the following definitions shall also apply:

- (a) 'fuel burn' means the actual quantity of fuel that has been burnt during the flight (gate-to-gate);
- (b) 'actual ramp weight' means the actual metric tons weight of an aircraft before the engine is started.

5.2. Data-set specification

5.2.1. Air transport operators shall provide the following data for each flight they operate within the geographical scope of this Regulation:

- (a) aircraft registration;
- (b) aircraft type;
- (c) flight identifier;
- (d) flight rules and flight type;
- (e) encoded airport of departure and of destination;
- (f) arrival and departure runway designator, where available;
- (g) arrival and departure stand, where available;
- (h) scheduled time of departure (off-block);
- (i) scheduled time of arrival (on-block);
- (j) out-off-on-in time stamps both scheduled and actual;
- (k) delay causes;
- (l) de-icing or anti-icing information, where available.

5.2.2. Air transport operators shall provide the data referred to in point 3.2.3 for each operational cancellation within the geographical scope of this Regulation.

5.2.3. In addition to the data required under Part B of Annex IV to Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC ⁽¹⁾, air transport operators may provide the Commission with the following data for each flight they operate within the geographical scope of this Regulation:

- (a) fuel burn;
- (b) actual ramp weight.

5.2.4. Air transport operators may provide:

- (a) voluntary reports on access to airspace;
- (b) voluntary report on degradation or disruption of ANS at airports;
- (c) voluntary reports on ANS safety occurrences;
- (d) voluntary reports on *en route* capacity shortfalls, level capping or rerouting;
- (e) voluntary reports on consultation meetings with ANSPs and States.

5.2.5. Air transport operators shall provide information collected through automated safety data recording systems where available, as a minimum on separation minima infringements and runway incursions.

5.3. Periodicity of data provision

Data referred to in points 5.2.1, 5.2.2 and 5.2.3 shall be provided on a monthly basis.

Reports referred to in point 5.2.4 may be provided at any time.

Data referred to in point 5.2.5 shall be provided on an annual basis.

⁽¹⁾ OJ L 275, 25.10.2003, p. 32.

COMMISSION IMPLEMENTING REGULATION (EU) No 391/2013**of 3 May 2013****laying down a common charging scheme for air navigation services****(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 ⁽¹⁾ as amended by Regulation (EC) No 1070/2009 (the service provision Regulation) ⁽²⁾, and in particular Article 15(4) thereof,

Whereas:

- (1) Regulation (EC) No 550/2004 requires the Commission to establish a common charging scheme for air navigation services, allowing for its uniform application in the single European sky.
- (2) The development of a common charging scheme for air navigation services provided during all phases of flight is of the utmost importance for implementation of the single European sky initiative. Such a system should help to increase transparency with regard to the determination, imposition and enforcement of charges applicable to airspace users. The system should also contribute to the safe, cost-efficient and effective provision of air navigation services to the users that finance the system and stimulate integrated service provision.
- (3) The common charging scheme should be an integral element in reaching the objectives of the performance scheme as established under Article 11 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 ⁽³⁾ as amended by Regulation (EC) No 1070/2009 (the framework Regulation) and Commission Implementing Regulation (EU) No 390/2013 of 3 May 2013 laying down a performance scheme for air navigation services and network functions ⁽⁴⁾.
- (4) In accordance with the overall objective of improving the performance of air navigation services, the charging scheme should promote cost and operational efficiencies and should provide for the establishment of incentive schemes for air navigation service providers to support improvements in the provision of air navigation services, including the application of traffic risk sharing.

- (5) The common charging scheme should be consistent with the Eurocontrol Route Charges System and Article 15 of the 1944 ICAO Chicago Convention on International Civil Aviation (the 'Chicago Convention').
- (6) The common charging scheme should allow optimum use of airspace, taking into account air traffic flows, in particular within functional airspace blocks as established in accordance with Article 9a of Regulation (EC) No 550/2004.
- (7) Key principle of the common charging scheme is to have complete and transparent information on the cost base made available in due time to airspace users' representatives and the competent authorities.
- (8) Where it is established that terminal air navigation services and/or CNS, MET and AIS services are provided under market conditions, Member States should be able to decide for these services not to calculate determined costs, not to calculate terminal charges, not to set terminal unit rates and/or not to set financial incentives.
- (9) Due to changing nature in the operation of airports, terminal charging zones may need to be modified in the course of a reference period.
- (10) The introduction of new technologies and procedures and associate business models to stimulate integrated service provision should lead to significant cost reductions to the benefit of users. To enable these future cost reductions air navigation service providers are faced with restructuring costs to improve their business, which they may recover if a net benefit to users is demonstrated.
- (11) Incentives mechanisms to encourage better performance should have regard to the desirability of rewarding or penalising actual performance in relation to performance levels expected when the performance plan was adopted.
- (12) In order to accelerate the implementation of SESAR technologies, investments in new ATM systems and major overhaul of existing ATM systems, which have an influence on the level of performance of the European ATM network, should be eligible for cost recovery through user charges if they are consistent with the implementation of the European ATM Master Plan, in particular, through common projects as specified in Article 15a(3) of Regulation (EC) No 550/2004. Furthermore, Member States should be able to decide to modulate air navigation charges to provide incentives to equip aircraft with systems included in the common projects.

⁽¹⁾ OJ L 96, 31.3.2004, p. 10.

⁽²⁾ OJ L 300, 14.11.2009, p. 34.

⁽³⁾ OJ L 96, 31.3.2004, p. 1.

⁽⁴⁾ See page 1 of this Official Journal.

- (13) To increase the efficiency of air navigation services and to promote their optimised use, Member States should be able to further modulate charges, taking into account the level of congestion of the network in a specific area or on a specific route at specific times.
- (14) The level of charges imposed in particular on light aircraft should not discourage the use of facilities and services necessary for safety or the introduction of new techniques and procedures.
- (15) Member States should be able to set their unit rates collectively, in particular when charging zones extend across the airspace of more than one Member State or when they are parties to a joint route charges system.
- (16) In order to improve the efficiency of the common charging scheme and to reduce the administrative and accounting workload, within a joint route charges system, Member States should be able to collect *en route* charges collectively through a single charge per flight.
- (17) Legal means should be reinforced in order to ensure the prompt and full payment of air navigation charges by users of air navigation services.
- (18) Charges to be imposed on airspace users should be established and applied in a fair and transparent manner, after consultation of users' representatives. Such charges should be reviewed on a regular basis.
- (19) Commission Regulation (EC) No 1794/2006 of 6 December 2006 laying down a common charging scheme for air navigation services⁽¹⁾ as amended by Commission Regulation (EU) No 1191/2010 of 16 December 2010⁽²⁾ should be repealed with effect of 1 January 2015.
- (20) The measures provided for in this Regulation are in accordance with the opinion of the Single Sky Committee,

HAS ADOPTED THIS REGULATION:

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject matter and scope

1. This Regulation lays down the measures for the development of a common charging scheme for air navigation services.
2. This Regulation shall apply to air navigation services provided by air traffic service providers designated in accordance with Article 8 of Regulation (EC) No 550/2004 and by providers of meteorological services, if designated in accordance with Article 9(1) of that Regulation, for general air traffic within the ICAO EUR and AFI regions where

Member States are responsible for the provision of air navigation services. It shall also apply to the Network Manager established in accordance with Article 3 of Commission Regulation (EU) No 677/2011⁽³⁾.

3. Member States may apply this Regulation to air navigation services provided in airspace under their responsibility within other ICAO regions, on condition that they inform the Commission and the other Member States accordingly.

4. Member States may apply this Regulation to providers of air navigation services which have received permission to provide air navigation services without certification, in accordance with Article 7(5) of Regulation (EC) No 550/2004.

5. Subject to Article 1(4) of Implementing Regulation (EU) No 390/2013, Member States may decide not to apply this Regulation to air navigation services provided at airports with fewer than 70 000 IFR air transport movements per year.

Member States shall inform the Commission of that decision.

Article 2

Definitions

For the purpose of this Regulation, the definitions in Article 2 of Regulation (EC) No 549/2004 shall apply.

In addition the following definitions shall apply:

- (1) 'user of air navigation services' means the operator of the aircraft at the time when the flight was performed or, if the identity of the operator is not known, the owner of the aircraft, unless it can be proved that another person was the operator at that time;
- (2) 'airspace users' representative' means any legal person or entity representing the interests of one or several categories of users of air navigation services;
- (3) 'IFR' means Instrument Flight Rules, as defined in Annex 2 of the Chicago Convention (Tenth Edition – July 2005);
- (4) 'VFR' means Visual Flight Rules, as defined in Annex 2 of the Chicago Convention (Tenth Edition – July 2005);
- (5) '*en route* charging zone' means a volume of airspace for which a single cost base and a single unit rate are established;
- (6) 'terminal charging zone' means an airport or a group of airports for which a single cost base and a single unit rate are established;
- (7) 'determined cost' means costs pre-determined by a Member State as referred to in Article 15(2)(a) of Regulation (EC) No 550/2004;

⁽¹⁾ OJ L 341, 7.12.2006, p. 3.

⁽²⁾ OJ L 333, 17.12.2010, p. 6.

⁽³⁾ OJ L 185, 15.7.2011, p. 1.

- (8) 'reference period' means the reference period for the performance scheme provided for in Article 11(3)(d) of Regulation (EC) No 549/2004 and Article 8 of Implementing Regulation (EU) No 390/2013;
- (9) 'IFR air transport movement' means the sum of take-offs and landings performed under instrument flight rules, calculated as the yearly average over the three years preceding the submission of the performance plan;
- (10) 'other revenue' means revenues obtained from public authorities, including the financial support from Union assistance programmes such as the Trans-European transport network (TEN-T), Connecting Europe Facility (CEF) and the Cohesion Fund, revenues obtained from commercial activities and/or, in the case of terminal unit rates, revenues obtained from contracts or agreements between air navigation service providers and airport operators;
- (11) 'performance plan' means a performance plan prepared and adopted in accordance with the provisions of Articles 11 to 16 of Implementing Regulation (EU) No 390/2013;
- (12) 'actual cost' means costs actually incurred in a year for the provision of air navigation services subject to a final audit;
- (13) 'CNS, MET and AIS services' means communication, navigation and surveillance services, meteorological services for air navigation and aeronautical information services;
- (14) 'restructuring costs' means significant one-time costs incurred by air navigation service providers in the process of restructuring by way of introducing new technologies and procedures and associate business models to stimulate integrated service provision where the Member State wishes to recover the costs in one or more reference periods. They may include costs incurred in compensating employees, closing air traffic control centres, shifting activities to new locations and, writing off assets and/or acquiring strategic participations in other air navigation service providers.
- (b) not to set financial incentives for these services in the key performance areas of capacity and environment in accordance with Article 15 of this Regulation;
- and, with regard to terminal air navigation services;
- (c) not to calculate terminal charges in accordance with Article 12 of this Regulation;
- (d) not to set terminal unit rates in accordance with Article 17 of this Regulation.
2. For the purpose of establishing that some or all of their terminal air navigation services or CNS, MET and AIS services are subject to market conditions, Member States shall carry out a detailed assessment against all the conditions laid down in Annex I to this Regulation. This assessment shall include consultation with the airspace users' representatives.
3. The Member States referred to in paragraph 1 shall submit to the Commission, no later than 19 months before the beginning of a reference period or the date of application of decisions taken in accordance with paragraph 1, a detailed report on the content and results of the assessment referred to in paragraph 2. That report shall be supported by evidence, including the tender documents if applicable, justification for the selection of the service provider, a description of the arrangements imposed on the selected service provider to ensure that terminal air navigation services or CNS, MET and AIS services are provided in a cost-efficient manner and the outcome of the consultation with the airspace users' representatives. The report shall provide full reasons for the Member State's conclusions.
4. Where the Commission agrees that market conditions have been established in accordance with the requirements of Annex I, it shall notify the Member State concerned within four months after receiving the report. This period of four months is extended to six months after receiving the report, if the Commission considers that additional evidence is required to determine whether market conditions have been established.

Article 3

Terminal air navigation services and CNS, MET and AIS services subject to market conditions

1. Without prejudice to the application of the principles referred to in Articles 14 and 15 of Regulation (EC) No 550/2004 and subject to the assessment referred to in paragraph 2, Member States may decide before the start of a reference period or in justified cases during the reference period, that some or all of their terminal air navigation services or CNS, MET and AIS services are subject to market conditions. In such case, the provisions of this Regulation apply, but the Member States concerned may decide with regard to these services:

- (a) not to calculate determined costs in accordance with Article 7 of this Regulation;

5. The Member State's report and the Commission decision referred to in paragraph 4 shall be valid for the duration of the reference period concerned and shall be publicly available and a reference to them shall be published in the *Official Journal of the European Union*.

*Article 4***Principles of the common charging scheme**

1. The common charging scheme shall be subject to the principles established in Article 15 of Regulation (EC) No 550/2004.
2. The determined costs of *en route* air navigation services shall be financed by *en route* charges imposed on users of air navigation services in accordance with the provisions of Chapter III and/or other revenues.
3. The determined costs of terminal air navigation services shall be financed by terminal charges imposed on users of air navigation services, in accordance with the provisions of Chapter III, and/or other revenues.
4. Paragraphs 2 and 3 shall be without prejudice to the financing of exemptions of certain users of air navigation services through other sources of funding in accordance with Article 10.
5. The common charging scheme shall provide for transparency and consultation with airspace users' representatives on the cost bases and on the allocation of costs among different services.
6. Revenues derived through *en route* or terminal charges set in accordance with Articles 11 and 12 of this Regulation shall not be used to finance commercial activities of air navigation service providers.

*Article 5***Establishment of charging zones**

1. Member States shall establish charging zones in the airspace falling under their responsibility where air navigation services are provided to airspace users.
2. The charging zones shall be defined in a manner consistent with air traffic control operations and services, after consultation with the airspace users' representatives.
3. An *en route* charging zone shall extend from the ground up to, and including, upper airspace. In complex terminal areas, Member States may establish a specific zone within a charging zone.
4. Where charging zones extend across the airspace of more than one Member State, the Member States concerned shall ensure consistency and uniformity in the application of this Regulation to the airspace concerned.

5. A terminal charging zone may be modified in the course of a reference period. In that case, Member States shall:

- (a) provide the Commission with the relevant cost and traffic data in order to allow it to rebuild consistent cost and traffic data series reflecting the situation before and after the change occurs, and carry out its performance monitoring tasks in accordance with Article 18 of Implementing Regulation (EU) No 390/2013;
- (b) consult airspace users' representatives and report their comments to the Commission;
- (c) provide the Commission with an assessment of the impact of the changes on the terminal air navigation services cost-efficiency targets and performance monitoring and indicate how it shall carry out the performance monitoring during the rest of the reference period.

CHAPTER II

THE COSTS OF AIR NAVIGATION SERVICE PROVISION*Article 6***Eligible services, facilities and activities**

1. Air navigation service providers referred to in Article 1(2) and (4) shall establish the costs incurred in the provision of air navigation services in relation to the facilities and services provided for and implemented under the ICAO Regional Air Navigation Plan, European Region, in the charging zones under their responsibility.

Those costs shall include administrative overheads, training, studies, tests and trials as well as research and development allocated to these services.

2. Member States may establish the following costs as determined costs, in accordance with Article 15(2)(b) of Regulation (EC) No 550/2004, where they occur as a result of the provision of air navigation services:

- (a) costs incurred by the relevant national authorities;
- (b) costs incurred by the qualified entities referred to in Article 3 of Regulation (EC) No 550/2004;
- (c) costs stemming from international agreements.

3. In accordance with Article 15a(3) of Regulation (EC) No 550/2004, part of the revenue resulting from the charges may be used to fund common projects for network-related functions that are of particular importance for improving the overall performance of air traffic management and air navigation services. In such cases, Member States shall put in place comprehensive and transparent accounting practices to ensure that airspace users are not charged twice. Determined costs resulting from a common project shall be clearly identified in accordance with Annexes II and VII.

4. Investments in new ATM systems and major overhauls of existing ATM systems are eligible insofar they are consistent with the implementation of the European ATM Master Plan, and, in particular, through the common projects specified in Article 15a(3) of Regulation (EC) No 550/2004.

Article 7

Calculation of costs

1. The determined costs and actual costs shall include the costs relating to eligible services, facilities and activities referred to in Article 6 of this Regulation and established in accordance with the accounting requirements laid down in Article 12 of Regulation (EC) No 550/2004.

The non-recurring effects resulting from the introduction of International Accounting Standards may be spread over a period not exceeding 15 years.

Without prejudice to Articles 17 and 19 of Implementing Regulation (EU) No 390/2013, the determined costs shall be fixed prior to the beginning of each reference period as part of the performance plan for each calendar year during the reference period and in both real and nominal terms. For each year in the reference period, the difference between the determined costs expressed in nominal terms prior to the reference period and the determined costs adjusted on the basis of the difference between the actual inflation recorded by the Commission in the Eurostat Harmonised Index of Consumer Price as published in April of year *n* and the inflation assumption as specified in the performance plan for the year preceding the reference period and for each year of the reference period, shall be carried over in year *n*+2 for the calculation of the unit rate.

Determined costs and actual costs shall be calculated in national currency. Where a common charging zone with a single unit rate has been established for a functional airspace block, the Member States concerned shall ensure conversion of national costs into euro or the national currency of one of the Member States concerned so as to ensure a transparent calculation of the single unit rate in application of the third subparagraph of Article 17(1) of this Regulation. Those Member States shall notify the Commission and Eurocontrol accordingly.

2. The costs referred to in paragraph 1 shall be broken down into staff costs, other operating costs, depreciation costs, cost of capital and exceptional items including non-recoverable taxes and customs duties paid, and all other related costs.

Staff costs shall include gross remuneration, overtime payments, and employers' contributions to social security schemes as well as pension costs and other benefits. Pension costs may be calculated using prudent assumptions based on the governance of the scheme or on national law, as appropriate. Those assumptions shall be detailed in the performance plan.

Other operating costs shall include costs incurred for the purchase of goods and services used to provide air navigation services, in particular outsourced services, external staff,

material, energy, utilities, rental of buildings, equipment and facilities, maintenance, insurance costs and travel expenses. Where an air traffic service provider purchases other air navigation services, the service provider shall include the actual expenditure for those services in its other operating costs.

Depreciation costs shall relate to the total fixed assets in operation for air navigation service purposes. Fixed assets shall be depreciated in accordance with their expected operating life, using the straight-line method applied to the costs of the assets being depreciated. Historic or current cost accounting may be applied for the calculation of the depreciation. The methodology shall not be altered during the duration of the depreciation and shall be consistent with the cost of capital applied (nominal cost of capital for historic cost accounting and real cost of capital for current cost accounting). Where current cost accounting is applied, the equivalent historic cost accounting figures shall also be provided to allow for comparison and assessment.

The cost of capital shall be equal to the product of:

- (a) the sum of the average net book value of fixed assets and possible adjustments to total assets determined by the national supervisory authority and used by the air navigation service provider in operation or under construction and of the average value of the net current assets, excluding interest-bearing accounts, that are required for the provision of air navigation services; and
- (b) the weighted average of the interest rate on debts and of the return on equity. For air navigation service providers without any equity capital, the weighted average shall be calculated on the basis of a return applied to the difference between the total of the assets referred to in point (a) and the debts.

Exceptional items shall consist of non-recurring costs relating to the provision of air navigation services during the same year.

Any adjustment beyond the provisions of the International Accounting Standards shall be specified in the performance plan for review by the Commission and in the additional information to be provided in accordance with Annex II.

3. For the purposes of calculating the cost of capital as set out in paragraph 2, the factors to which weight is to be given shall be based on the proportion of financing through either debt or equity. The interest rate on debts shall be equal to the weighted average interest rate on debts of the air navigation service provider. The return on equity shall be that provided in the performance plan for the reporting period and shall be based on the actual financial risk incurred by the air navigation service provider as assessed prior to the reference period.

When the assets do not belong to the air navigation service provider, but are included in the calculation of the cost of capital, Member States shall ensure that the costs of these assets are not recovered twice.

4. The calculation of actual costs may include the recovery of restructuring costs of air navigation service providers incurred in reference periods precedent to the reference period(s) of recovery and subject to a business case demonstrating a net benefit to users over time.

The national supervisory authority shall submit to the Commission the business case, a recovery plan for the restructuring costs and the results of a consultation with airspace users' representatives on the business case and the recovery plan for the restructuring costs.

Where the Commission finds that the expected net benefit to users over time is demonstrated, it shall notify the Member State concerned thereof within five months after receiving the submission by the national supervisory authority.

Where the Commission finds that the expected net benefit to users over time is not demonstrated, it shall decide in accordance with the procedure referred to in Article 5(2) of Regulation (EC) No 549/2004 within five months after receiving the submission by the national supervisory authority that the restructuring costs of air navigation service providers shall not be recovered and notify the Member State concerned thereof.

The Member State concerned shall report on the evolution of the restructuring costs and the net benefits to users in its annual report following Article 18(4) of Implementing Regulation (EU) No 390/2013.

Article 8

Allocation of costs

1. The costs of eligible services, facilities and activities within the meaning of Article 6 shall be allocated in a transparent way to the charging zones in respect of which they are actually incurred.

Where costs are incurred across different charging zones, they shall be allocated in a proportional way on the basis of a transparent methodology pursuant to Article 9.

2. The cost of terminal services shall be related to the following services:

- (a) aerodrome control services, aerodrome flight information services including air traffic advisory services and alerting services;
- (b) air traffic services related to the approach and departure of aircraft within a certain distance of an airport on the basis of operational requirements;
- (c) an appropriate allocation of all other air navigation services components, reflecting a proportionate distribution between *en route* and terminal services.

For the purposes of paragraph 2(b) and (c), Member States shall, before the start of each reference period, define the criteria used to allocate costs between terminal and *en route* services for each airport and inform the Commission accordingly.

3. The cost of *en route* services shall be related to the costs referred to in paragraph 1 with the exclusion of the costs referred to in paragraph 2.

4. If exemptions are granted to VFR flights in accordance with Article 10, the air navigation service provider shall identify the costs of air navigation services provided to VFR flights and separate them from the costs provided to IFR flights. These costs may be established through a marginal cost methodology taking into account the benefits to IFR flights stemming from the services granted to VFR flights.

Article 9

Transparency of costs and of the charging mechanism

1. Member States shall, in a coordinated manner, at the latest seven months before the start of each reference period, invite the airspace users' representatives to a consultation on determined costs, planned investments, service unit forecasts, charging policy and resulting unit rates. They shall be assisted by the air navigation service providers. Member States shall, in a transparent manner, establish their national or functional airspace blocks costs in accordance with Article 6 and make available their unit rates to airspace users' representatives, the Commission and, where applicable, to Eurocontrol.

During the reference period, Member States shall, on an annual basis and in a coordinated manner, invite the airspace users' representatives to a consultation on any deviation from the forecast, especially with regard to:

- (a) actual traffic and costs compared to forecast traffic and determined costs;
- (b) the implementation of the traffic risk-sharing mechanism set out in Article 13;
- (c) the implementation of the cost sharing mechanism set out in Article 14;
- (d) the incentive schemes set out in Article 15;
- (e) the modulation of charges set out in Article 16.

The consultation may be organised on a regional basis. Airspace user representatives shall retain the right to request that more consultations be held. User consultation shall also be organised systematically following the activation of an alert mechanism as provided for in Articles 17 and 19 of Implementing Regulation (EU) No 390/2013 generating a revision of the determined unit cost(s).

2. The information referred to in paragraph 1 shall be based on the reporting tables and detailed rules set out in Annexes II, VI and VII. Where it is established in accordance with Article 3 that terminal air navigation services or CNS, MET and AIS services are subject to market conditions, the information referred to in paragraph 1 shall be based on the reporting tables and detailed rules set out in Annex III. The relevant documentation shall be made available to the airspace users' representatives, the Commission, Eurocontrol and to the national supervisory authorities three weeks before the consultation meeting. For the annual consultation referred to in the second subparagraph of paragraph 1, the relevant documentation shall be made available to the airspace users' representatives, the Commission, Eurocontrol and to the national supervisory authorities each year, no later than 1 June.

3. In order to allow reporting on the achievement of performance as established in Article 18(4) of Implementing Regulation (EU) No 390/2013, Member States shall make available to the Commission and Eurocontrol, by 1 June of each year, their actual costs incurred during the previous year and the difference between the actual costs and the determined costs contained in the performance plan by making use of the reporting tables and detailed rules set out in Annexes II, VI and VII. Those Member States that have decided that terminal air navigation services or CNS, MET and AIS services are subject to market conditions in accordance with Article 3 shall provide this information by making use of the reporting tables and detailed rules set out in Annex III.

CHAPTER III

THE FINANCING OF AIR NAVIGATION SERVICE PROVISION THROUGH AIR NAVIGATION CHARGES

Article 10

Exemptions from air navigation charges

1. Member States shall exempt from en route charges:
 - (a) flights performed by aircraft with a maximum authorised take-off weight which is less than two metric tons;
 - (b) mixed VFR/IFR flights in the charging zones where they are performed exclusively under VFR and where a charge is not levied for VFR flights;
 - (c) flights performed exclusively for the transport, on official mission, of reigning Monarchs and their immediate family, Heads of State, heads of Government and Government Ministers; in all cases, the exemption must be substantiated by the appropriate status indicator or remark on the flight plan;
 - (d) search and rescue flights authorised by the appropriate competent body.
2. Member States may exempt from en route charges:
 - (a) military flights performed by military aircraft of any country;

- (b) training flights performed exclusively for the purpose of obtaining a licence, or a rating in the case of cockpit flight crew, where this is substantiated by an appropriate remark on the flight plan; flights must be performed solely within the airspace of the Member State concerned and must not serve for the transport of passengers and/or cargo, nor for positioning or ferrying of the aircraft;
- (c) flights performed exclusively for the purpose of checking or testing equipment used or intended to be used as ground aids to air navigation, excluding positioning flights by the aircraft concerned;
- (d) flights terminating at the airport from which the aircraft has taken off and during which no intermediate landing has been made;
- (e) VFR flights;
- (f) humanitarian flights authorised by the appropriate competent body;
- (g) customs and police flights.

3. Member States may exempt from terminal charges the flights referred to in paragraph 1 and 2.

4. The costs incurred for exempted flights shall be composed of:

- (a) the costs of exempted VFR flights as identified in Article 8(4); and
- (b) the costs of exempted IFR flights which shall be calculated as the product of the costs incurred for IFR flights and the ratio of the number of exempted service units to the total number of service units, with the total number of service units consisting of the service units in respect of IFR flights, as well as the service units in respect of VFR flights, where these are not exempted. The costs incurred for IFR flights shall be equal to the total costs less the costs of VFR flights.

5. Member States shall ensure that air navigation service providers are reimbursed for the services they have provided to exempted flights.

Article 11

Calculation of en route charges

1. Without prejudice to the possibility pursuant to Article 4(2) of financing *en route* air navigation services through other revenues, the *en route* charge for a specific flight in a specific *en route* charging zone shall be equal to the product of the unit rate established for that *en route* charging zone and the *en route* service units for that flight.

2. The unit rate and the *en route* service units shall be calculated in accordance with Annex IV.

Article 12

Calculation of terminal charges

1. Without prejudice to the possibility pursuant to Article 4(3) of financing terminal air navigation services through other revenues, the terminal charge for a specific flight in a specific terminal charging zone shall be equal to the product of the unit rate established for this terminal charging zone and the terminal service units for that flight. For charging purposes, approach and departure shall count as a single flight. The unit to be counted shall be either the arriving or the departing flight.

2. The unit rate and the terminal service units shall be calculated in accordance with Annex V.

Article 13

Traffic risk sharing

1. A traffic risk-sharing mechanism shall apply in accordance with the principles referred to in Article 12 of Implementing Regulation (EU) No 390/2013.

2. The following costs shall not be submitted to traffic risk-sharing and shall result in an increase or reduction of the determined costs in (a) subsequent year(s) irrespective of traffic evolution:

- (a) the determined costs established in accordance with Article 6(2) with the exception of agreements relating to cross border air traffic service provision;
- (b) the determined costs for meteorological services;
- (c) the adjustment due to differences between forecasted and actual inflation as referred to in Article 7(1);
- (d) the recovery of restructuring costs, if authorised in accordance with Article 7(4);
- (e) the carry-over resulting from the implementation of the traffic risk-sharing mechanism;
- (f) the carry-overs authorised from the previous reference period resulting from the implementation of the cost sharing mechanism referred to in Article 14;
- (g) bonuses or penalties resulting from financial incentive schemes referred to in Article 15;
- (h) the over-or under-recoveries that may result from the modulation of air navigation charges in application of Article 16;
- (i) the over-or under-recoveries resulting from traffic variations;

- (j) for the second reference period, the over- or under-recoveries incurred by Member States up to and including the year 2011 in respect to *en route* and 2014 in respect to terminal air navigation services.

In addition, Member States may exempt from traffic risk-sharing the determined costs of providers of air navigation services which have received permission to provide air navigation services without certification, in accordance with Article 7(5) of Regulation (EC) No 550/2004.

3. Where, over a given year *n*, the actual number of service units does not exceed or fall below the forecast established in the performance plan for that year *n* by more than 2 %, the additional or lost revenue of the air navigation service provider in respect of determined costs shall not be carried over.

4. Where, over a given year *n*, the actual number of service units exceeds the forecast established in the performance plan for that year *n* by more than 2 %, a minimum of 70 % of the additional revenue obtained by the air navigation service provider(s) concerned in excess of 2 % of the difference between the actual service units and the forecast in respect of determined costs established in the performance plan shall result in a corresponding reduction of the determined costs of year *n*+2.

Where, over a given year *n*, the actual number of service units falls below the forecast established in the performance plan for that year *n* by more than 2 %, a maximum of 70 % of the revenue loss incurred by the air navigation service provider(s) concerned in excess of 2 % of the difference between the actual service units and the forecast in respect of determined costs established in the performance plan shall result in a corresponding increase of the determined costs starting not earlier than year *n*+2.

5. Where, over a given year *n*, the actual number of service units is lower than 90 % of the forecast established in the performance plan for that year *n*, the full amount of the revenue loss incurred by the air navigation service provider(s) concerned in excess of 10 % of the difference between the actual service units and the forecast in respect of determined costs established in the performance plan shall result in a corresponding increase of the determined costs starting not earlier than year *n*+2.

Where, over a given year *n*, the actual number of service units exceed 110 % of the forecast established in the performance plan for that year *n*, the full amount of the additional revenue obtained by the air navigation service provider(s) concerned in excess of 10 % of the difference between the actual service units and the forecast in respect of determined costs established in the performance plan shall result in a corresponding reduction of the determined costs of year *n*+2.

6. In the case of terminal air navigation services, Member States may decide for airports with fewer than 225 000 IFR air transport movements per year not to apply the provisions of paragraphs 3, 4 and 5 above. Member States shall inform the Commission of that decision within two months following publication of this Regulation.

Article 14

Cost sharing

1. A cost-sharing mechanisms shall apply in accordance with the following principles:

- (a) where, over the whole reference period, actual costs fall below the determined costs established at the beginning of the reference period, the resulting difference shall be retained by the air navigation service provider, Member State or qualified entity concerned;
- (b) where, over the whole reference period, actual costs exceed the determined costs established at the beginning of the reference period, the resulting difference shall be borne by the air navigation service provider, Member State or qualified entity concerned.

2. Costs exempt from the application of paragraphs 1(a) and 1(b):

- (a) The cost-sharing arrangements in paragraphs 1(a) and 1(b) shall not apply to the difference between determined costs and actual costs with regard to cost items for which the air navigation service provider, Member State or qualified entities concerned have taken reasonable and identifiable steps to manage but which may be deemed to be outside their control as a result of:

- (i) unforeseen changes in national pensions law, pension accounting law or pension costs resulting from unforeseen financial market conditions;

- (ii) significant changes in interest rates on loans, which finance costs arising from the provision of air navigation services;

- (iii) unforeseen new cost items not covered in the performance plan, but required by law;

- (iv) unforeseen changes in national taxation law;

- (v) unforeseen changes in costs or revenues stemming from international agreements.

- (b) Without prejudice to Article 7(1), third subparagraph, each cost item included under paragraph 2(a) shall be determined by the national supervisory authority and the performance plan shall specify for each cost item in relation to the previous reference period:

- (i) a full description of the cost item;

- (ii) the cost attributed to this item in the performance plan;

- (iii) the justification why the cost item is considered to be eligible within the scope of paragraph 2(a) rather than paragraphs 1(a) and 1(b);

- (iv) the underlying external events or circumstances outside the control of the national supervisory authorities, air navigation service provider or qualified entity concerned that triggered a variation between actual and determined costs related to this cost item;

- (v) actions taken to manage the cost risk associated with this item.

- (c) The differences between the actual costs and the determined costs in respect to these items shall be identified and explained in accordance with Annex VII.2.

- (d) Where, over the whole reference period, as a result of deducting costs from the scope of paragraph 2(a), actual costs are lower than the determined costs established at the beginning of the reference period, the resulting difference shall be returned to airspace users through a carry over to the following reference period(s).

- (e) Where, over the whole reference period, as a result of including costs within the scope of paragraph 2(a), actual costs exceed the determined costs established at the beginning of the reference period, the resulting difference shall be passed on to airspace users through a carry over to the following reference period(s).

- (f) The national supervisory authority concerned shall establish each year that the variation of actual costs against determined costs is actually the result of relevant events or circumstances set out in paragraph 2(a) and in line with the provision of paragraph 2(b). It shall further verify that the variation in costs to be passed on to users is specifically identified and categorised. It shall inform airspace users and report to the Commission about the outcome of its assessment on an annual basis. Where the Commission finds, within six months after receiving the annual assessment report of the national supervisory authority concerned, that the assessment report does not establish that the variation of actual costs against determined costs is actually the result of relevant events or circumstances set out in paragraph 2(a) and in line with the provision of paragraph 2(b), it shall decide in accordance with the procedure referred to in Article 5(2) of Regulation (EC) No 549/2004 that the Member State(s) concerned shall not be allowed to apply the provisions of paragraph 2 in respect to the variation of actual costs against determined costs, in part or in whole according to its findings.

- (g) The amounts carried over shall be specified by factors and described in the additional information to be provided in accordance with Annex VI.

Article 15

Incentive schemes for air navigation service providers

1. Member States shall adopt financial incentives for their air navigation service providers in the key performance area of capacity and may adopt such financial incentives in the key performance area of environment in accordance with Article 12 of Implementing Regulation (EU) No 390/2013. These incentives shall consist in bonuses for exceeding and penalties for under-achieving target levels of performance and are to be added to or deducted from the adopted determined costs according to the level of performance achieved.

Such financial incentive schemes shall conform to the following principles:

- (a) the unit rate of year $n+2$ shall be adjusted to provide for a bonus for exceeding or penalty for under-achievement according to the actual performance level of the air navigation service provider in year n against the relevant target;
- (b) the applicable level of bonuses and penalties shall be commensurate with the targets to be reached and the performance achieved. There shall be no bonuses for performance that is at or below that expected in performance targets;
- (c) The applicable level of bonuses and penalties shall be equal;
- (d) the maximum amount of aggregate bonuses and the maximum amount of aggregate penalties shall not exceed 1 % of the revenue from air navigation services in year n ;
- (e) the performance variation levels and the applicable level of bonuses and penalties shall be determined following the consultation referred to in Article 9 and shall be set by the performance plan;
- (f) in case of targets at the level of functional airspace blocks, bonuses and penalties shall be applied to the air navigation service providers concerned;
- (g) for the key performance area of capacity, the target levels of performance may be adjusted to cover only delay causes related to ATC capacity, ATC routing, ATC staffing, ATC equipment, airspace management and special event with the codes C, R, S, T, M and P of the ATFCM user manual.

2. National supervisory authorities shall monitor the proper implementation of these incentive schemes by air navigation service providers.

Article 16

Modulation of air navigation charges

1. Member States, following the offer to consult provided for in Article 9 may, at national or functional airspace block level and on a non-discriminatory and transparent basis, modulate air navigation charges incurred by airspace users to reflect their efforts made in particular to:

- (a) optimise the use of air navigation services;
- (b) reduce the environmental impact of flying;
- (c) reduce the overall costs of air navigation services and increase their efficiency, in particular by modulating charges according to the level of congestion of the network in a specific area or on a specific route at specific times.

The modulation of charges shall not result in any overall change in revenue for the air navigation service provider. Over- or under recoveries shall be passed on to the following period.

2. Air navigation charges may also be modulated, on a non-discriminatory and transparent basis, to accelerate the deployment of SESAR ATM capabilities. The modulation may in particular aim at giving incentives to equip aircraft with systems included in the common projects referred to in Article 15a(3) of Regulation (EC) No 550/2004.

3. The modulation of air navigation charges means a variation of the *en route* charge and/or the terminal charge calculated on the basis of the provisions of Articles 11 and 12.

4. National supervisory authorities shall monitor the proper implementation of the modulation of air navigation charges by air navigation service providers.

Article 17

Setting of unit rates for charging zones

1. Member States shall ensure that unit rates are set for each charging zone on an annual basis. Without prejudice to paragraph 2, unit rates shall not be modified in the course of a year.

Unit rates shall be set in accordance with the following process:

- (a) For each year of the reference period, unit rates for year n shall be calculated by 1 November of year $n-1$ on the basis of the determined unit costs contained in the performance plan and the adjustments set out in paragraph 2.2 of Annex IV and of Annex V of this Regulation.
- (b) Unit rates for year n shall be submitted by the Member State to the Commission by 1 June of year $n-1$ following the requirements of Articles 9(1) and 9(2).

- (c) The Commission shall assess these unit rates against the provisions of this Regulation and Implementing Regulation (EU) No 390/2013.
- (d) Where the Commission finds that the unit rates comply with the provisions of this Regulation and Implementing Regulation (EU) No 390/2013, it shall notify the Member State concerned accordingly within four months after submission of the unit rates.
- (e) Where the Commission finds that the unit rates do not comply with the provisions of this Regulation and Implementing Regulation (EU) No 390/2013, it shall, within four months after submission of the unit rates, inform the Member State concerned accordingly, which shall within one month submit to the Commission revised unit rates.
- (f) Member States shall inform the Commission and Eurocontrol, where appropriate, of the unit rates for each charging zone at the latest by 1 November of year $n-1$.

Unit rates shall be set in national currency. Where Member States which form part of a functional airspace block decide to establish a common charging zone with a single unit rate, that unit rate shall be set in euro or in the national currency of one of the Member States concerned. The Member States concerned shall notify the Commission and Eurocontrol of the applicable currency.

2. Where performance plans are adopted after 1 November of the year preceding the year in which the reference period begins or revised in accordance with Articles 17 and 19 of Implementing Regulation (EU) No 390/2013, unit rates shall be recalculated where necessary on the basis of the final adopted plan or the applicable corrective measures. To this effect, and in accordance with Article 16 of Implementing Regulation (EU) No 390/2013, Member States shall calculate and apply their unit rate in accordance with the adopted performance plan as early as possible in the course of the first year of the reference period or the first year of the application of the revised performance plans and targets. The difference in revenue due to the temporary application of the initial unit rate shall be carried over in the calculation of the unit rate of the following year. For the first year of the reference period or the first year of the application of the revised performance plans and targets, the traffic risk-sharing mechanism provided for in Article 13 shall be applied on the basis of the determined costs and service units contained in the final adopted performance plan and of the actual service units for the year.

Article 18

Collection of charges

1. Member States may collect charges through a single charge per flight. Where charges are billed and collected on a regional basis, the billing currency may be the euro and an administrative unit rate for billing and collection costs may be added to the unit rate concerned. Member States shall ensure that the amounts collected on their behalf are used to finance the costs determined in accordance with the provisions of this Regulation.

2. Users of air navigation services shall promptly and fully pay all air navigation charges.

3. Member States shall ensure that effective enforcement measures are applied. These measures may include denial of services, detention of aircraft or other enforcement measures in accordance with applicable law.

CHAPTER IV

FINAL PROVISIONS

Article 19

Appeal

Member States shall ensure that decisions taken pursuant to this Regulation are properly explained and are subject to an effective review and/or appeal procedure.

Article 20

Facilitation of compliance monitoring

Air navigation service providers shall facilitate inspections and surveys by the national supervisory authority concerned or by a qualified entity acting on the supervisory authority's behalf, including site visits. The authorised persons shall be empowered:

- (a) to examine the relevant accounting documents, asset books, inventories and any other material relevant to the establishment of air navigation charges;
- (b) to take copies of or extracts from such documents;
- (c) to ask for oral explanations on site;
- (d) to enter relevant premises, land or vehicles.

Such inspections and surveys shall be carried out in compliance with the procedures in force in the Member State in which they are to be undertaken.

Article 21

Review

The review by the Commission of the performance scheme, referred to in Article 24 of Implementing Regulation (EU) No 390/2013 shall include the traffic risk-sharing mechanism set out in Article 13, the cost sharing mechanism set out in Article 14, the incentive schemes established pursuant to Article 15, the modulation of charges pursuant to Article 16, and their impact and effectiveness in achieving the set performance targets.

Article 22

Entry into force and application

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

2. This Regulation shall apply from the second reference period as defined in Article 8 of Implementing Regulation (EU) No 390/2013 and during that period. With regards to the application of the performance scheme, in order to allow the adoption of Union-wide targets provided for in Article 10(2) of Implementing Regulation (EU) No 390/2013 before the start of the second reference period and the preparation and adoption of performance plans in accordance with the provisions of Implementing Regulation (EU) No 390/2013 Articles 1(5), 3, 7(4), 9, 14(2)(b)-(f) and 17, as well as the Annexes of this Regulation shall apply from the date of entry into force of this Regulation.

Article 23

Repeal of Commission Regulation (EC) No 1794/2006

Commission Regulation (EC) No 1794/2006 of 6 December 2006 laying down a common charging scheme for air navigation services shall be repealed with effect from 1 January 2015.

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

Done at Brussels, 3 May 2013.

For the Commission

The President

José Manuel BARROSO

ANNEX I

ASSESSMENT OF THE EXISTENCE OF MARKET CONDITIONS FOR THE PROVISION OF TERMINAL AIR NAVIGATION SERVICES AND/OR CNS, MET AND AIS SERVICES IN ACCORDANCE WITH ARTICLE 3

The conditions to be assessed for determining whether terminal air navigation services and/or CNS, MET and AIS services are provided under market conditions are as follows:

1. The extent to which service providers can freely offer to provide or withdraw the provision of these services:
 - (a) the existence or otherwise of any significant legal or economic barriers that would prevent a service provider from offering to provide or withdrawing the provision of these services;
 - (b) the contract duration; and
 - (c) the existence of a procedure allowing assets and staff to be transferred from one air navigation service provider to another.
 2. The extent to which there is a free choice in respect to service provider, including, in the case of airports, the option to self-supply:
 - (a) the existence or otherwise of legal, contractual or practical barriers to change service provider or in the case of terminal air navigation services to move towards self-supply of air navigation services by airports;
 - (b) the role of airspace users' representatives in selecting the service provider.
 3. The extent to which it can be chosen from a range of service providers:
 - (a) the existence of a public tendering process (not applicable in case of self-supply);
 - (b) if applicable, evidence of alternative service providers participating in the tendering process and having provided services in the past, including the option of self-supply for the airport.
 4. For terminal air navigation services, the extent to which airports are subject to commercial cost pressures or incentive-based regulation:
 - (a) whether airports actively compete for airline business;
 - (b) the extent to which airports bear the air navigation service charge;
 - (c) whether airports operate in a competitive environment or under economic incentives designed to cap prices or otherwise incentivise cost reductions.
 5. Where the provider of terminal air navigation services or CNS, MET and AIS services also provides *en route* air navigation services, these activities shall be subjected to separate accounting and reporting.
 6. For terminal air navigation services, the assessment in this Annex shall be carried out at each individual airport, as appropriate.
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ANNEX II

TRANSPARENCY OF COSTS AND UNIT COSTS**1. REPORTING TABLE**

Member States as well as air navigation service providers shall each fill in the reporting table in this Annex for each charging zone under their responsibility and for each year of the reference period. Member States shall also provide a consolidated reporting table for each charging zone under their responsibility.

A consolidated table shall be filled in for each airport subject to the provisions of this Regulation. For airports with less than 70 000 IFR air transport movements per year being calculated as the average over the previous three years, costs may be presented in a consolidated way.

When a charging zone extends across the airspace of more than one Member State, they shall fill in the table jointly in accordance with the arrangements referred to in Article 5(4).

Actual costs shall be established on the basis of the final audited accounts. The costs shall be established in accordance with the business plan required by the certificate and reported in the currency in which they are established in accordance with Article 7(1), fourth subparagraph.

Actual service units shall be established on the basis of the figures provided by the entity that is billing and collecting charges. Any difference from these figures shall be duly justified in the additional information.

In order to facilitate the establishment by the Commission of Union-wide performance targets and without prejudice to the performance plans to be adopted, Member States as well as air navigation service providers shall fill in a reporting table with initial forecast figures 19 months before the start of a reference period.

Table 1 - Total Costs and Unit Costs

Charging zone name						Period of reference: N - N+4				
Currency										
Entity name:										

Determined costs (performance plan)						Actual costs				
-------------------------------------	--	--	--	--	--	--------------	--	--	--	--

Cost details	N	N+1	N+2	N+3	N+4	N	N+1	N+2	N+3	N+4
1. Detail by nature (in nominal terms)										
1.1 Staff										
1.2 Other operating costs ⁽¹⁾										
1.3 Depreciation										
1.4 Cost of capital										
1.5 Exceptional items										
1.6 Total costs										
Total % n/n-1										
Staff % n/n-1										
Other op. % n/n-1										
2. Detail by service (in nominal terms)										
2.1 Air Traffic Management										
2.2 Communication ⁽²⁾										
2.3 Navigation ⁽²⁾										
2.4 Surveillance ⁽²⁾										
2.5 Search and rescue										
2.6 Aeronautical Information ⁽²⁾										
2.7 Meteorological services ⁽²⁾										
2.8 Supervision costs										
2.9 Other State costs ⁽¹⁾										
2.10 Total costs										
Total % n/n-1										
ATM % n/n-1										
CNS % n/n-1										
3. Complementary information (in nominal terms)										
Average asset base										
3.1 Net book val. fixed assets										
3.2 Adjustments total assets										
3.3 Net current assets										
3.4 Total asset base										
Cost of capital %										
3.5 Cost of capital pre tax rate										
3.6 Return on equity										
3.7 Average interest on debts										
Cost of common projects										
3.8 Total costs of common projects										

Costs exempted from cost sharing (Article 14(2)(b))

3.9 Total costs exempted from cost sharing										
--	--	--	--	--	--	--	--	--	--	--

4. Total costs after deduction of costs for services to exempted flights (in nominal terms)

4.1 Costs for exempted VFR flights										
4.2 Total determined/actual costs										

5. Cost-efficiency KPI - Determined/Actual Unit Cost (in real terms)

5.1 Inflation % ⁽³⁾										
5.2 Price index ⁽⁴⁾										
5.3 Total costs real terms ⁽⁵⁾										
Total % n/n-1										
5.4 Total Service Units										
Total % n/n-1										
5.5 Unit cost										
Total % n/n-1										

Costs and asset base items in '000 - Service units in '000

⁽¹⁾ Including EUROCONTROL costs (see details in Table 3).⁽²⁾ To be left empty when such services are provided under the provisions of Article 3⁽³⁾ Actual/forecast inflation used for establishing the determined costs in nominal terms – actual/revised forecast inflation⁽⁴⁾ Forecast price index - base 100 in year N-3 inflation N-2: inflation N-1:

Actual price index - base 100 in year N-3 inflation N-2: inflation N-1:

⁽⁵⁾ Determined costs (performance plan) in real terms – actual/revised forecast costs at N-3 prices

2. ADDITIONAL INFORMATION

In addition, Member States as well as air navigation service providers shall each provide at least the following information:

- (a) description of the methodology used for allocating costs of facilities or services between different air navigation services based on the list of facilities and services listed in ICAO Regional Air Navigation Plan, European Region (Doc 7754), and a description of the methodology used for allocating those costs between different charging zones;
 - (b) description of the methodology and assumptions used to establish the costs of air navigation services provided to VFR flights, when exemptions are granted for VFR flights in accordance with Article 10;
 - (c) further to Article 7(2), description and justification of any adjustment beyond the provisions of the International Accounting Standards;
 - (d) description and explanation of the method adopted for the calculation of depreciation costs: historic costs or current costs. When current cost accounting is adopted, provision of comparable historic cost data;
 - (e) justification for the cost of capital, including the components of the asset base, the possible adjustments to total assets and the return on equity;
 - (f) total costs per airport for each airports with fewer than 70 000 IFR air transport movements per year, when these are provided in a consolidated way in the reporting table;
 - (g) definition of the criteria used to allocate costs between terminal and *en route* services for each airport within the scope of this Regulation;
 - (h) breakdown of the meteorological costs between direct costs and 'MET core costs' defined as the costs of supporting meteorological facilities and services that also serve meteorological requirements in general. These include general analysis and forecasting, surface and upper-air observation networks, meteorological communication systems, data processing centres and supporting core research, training and administration;
 - (i) description of the methodology used for allocating total MET costs and MET core costs to civil aviation and between charging zones;
 - (j) as requested in point 1, 19 months before the start of a reference period, description of the reported forecast costs and traffic;
 - (k) description of the reported actual costs and the difference from the determined costs, for each year of the reference period;
 - (l) description of the reported actual service units and the differences both against the forecast and compared with the figures provided by Eurocontrol, as appropriate, for each year of the reference period;
 - (m) every year of the reference period, the difference between the investments of the air navigation service providers recorded in the performance plans and the actual spending, as well as the difference between the planned date of entry into operation of these investments and the actual situation.
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ANNEX III

SPECIFIC TRANSPARENCY REQUIREMENTS FOR AIR NAVIGATION SERVICES PROVIDED UNDER MARKET CONDITIONS

Information disclosed in application of this Annex shall be confidential to the Commission and not made publicly available.

1. THE COSTS OF AIR NAVIGATION SERVICES

1.1. Reporting table

Member States shall fill the reporting tables in this Annex. Tables A and B shall be filled in for the entire charging zone, with the exception in the case of terminal air navigation services, Table B on prices shall be filled in for each airport where air navigation services are provided under market conditions in the terminal charging zone under their responsibility.

For Table A, the figures shall be actual figures for year (n-3) until year (n-1) and planned figures for year (n) onwards. Actual costs shall be established on the basis of final audited accounts. Planned costs shall be established in accordance with the business plan required by the certificate.

For Table B, the annual price shall reflect the value of the contract. The unit of output considered to determine the value of the contract shall be described and reported in the table by the Member State concerned.

Costs and prices shall be established in national currency.

Table A

[illegible]

Table B

Organisation: Charging zone: Airport name:							Year		n
Airport i	(n-3)	(n-2)	(n-1)	(n)	(n+1)	(n+2)	(n+3)	(n+4)	(n+5)
Annual Price (a)									
Unit of Output (b)									
Unit Price									

1.2. Additional information

In addition, Member States shall provide at least the following information:

- (a) description of the criteria used for allocating costs of facilities or services between different air navigation services based on the list of facilities and services listed in ICAO Regional Air Navigation Plan, European Region (Doc 7754);
- (b) description and explanation of differences between planned and actual figures for year (n-1) in respect to all data provided in Tables A and B;
- (c) description and explanation of five year planned costs and investments in relation to expected traffic;
- (d) description and explanation of the method adopted for calculating depreciation costs: historic costs or current costs;
- (e) justification for the cost of capital, including the components of the asset base.

2. THE FINANCING OF AIR NAVIGATION SERVICES

Air navigation service providers shall provide a description of the way or ways in which the costs of air navigation services are financed in respect to each charging zone.

ANNEX IV

CALCULATION OF THE EN ROUTE SERVICE UNITS AND UNIT RATES

1. Calculation of *en route* service units

- 1.1. The *en route* service unit shall be calculated as the product of the distance factor and the weight factor for the aircraft concerned. The total *en route* service units shall consist of the total service units in respect of IFR flights, as well as the service units in respect of VFR flights, where these are not exempted in accordance with Article 10.
- 1.2. The distance factor shall be obtained by dividing by one hundred the number of kilometres flown in the great circle distance between the entry and the exit point of the charging zones, according to the latest known flight plan filed by the aircraft concerned for air traffic flow purposes.
- 1.3. If the exit and entry point of a flight are identical in a charging zone, the distance factor shall be equal to the distance in the great circle distance between these points and the most distant point of the flight plan multiplied by two.
- 1.4. The distance to be taken into account shall be reduced by 20 kilometres for each take-off from and for each landing on the territory of a Member State.
- 1.5. The weight factor, expressed as a figure taken to two decimal places, shall be the square root of the quotient obtained by dividing by fifty the number of metric tons in the maximum certificated take-off weight of the aircraft as shown in the certificate of airworthiness or any equivalent official document provided by the aircraft operator. Where this weight is unknown, the weight of the heaviest aircraft of the same type known to exist shall be used. Where an aircraft has multiple certificated maximum take-off weights, the maximum one shall be used. Where an aircraft operator operates two or more aircraft which are different versions of the same type, the average of the maximum take-off weights of all his aircraft of that type shall be used for each aircraft of that type. The calculation of the weight factor per aircraft type and per operator shall be effected at least once a year.

2. Calculation of *en route* unit rates

- 2.1. The *en route* unit rate shall be calculated before the beginning of each year of the reference period.
 - 2.2. It shall be calculated by dividing the forecast number of total *en route* service units for the relevant year as defined in the performance plan into the algebraic sum of the following elements:
 - (i) the determined costs, expressed in nominal terms of the relevant year as defined in the performance plan;
 - (ii) the adjustment of the difference between forecasted and actual inflation as referred to in Article 7(1);
 - (iii) the recovery of restructuring costs, if authorised in accordance with Article 7(4);
 - (iv) the carry-overs resulting from the implementation of the traffic risk-sharing mechanism referred to in Article 13;
 - (v) the carry-overs from the previous reference period resulting from the implementation of the cost sharing mechanism referred to in Article 14;
 - (vi) bonuses and penalties resulting from the financial incentive schemes referred to in Article 15;
 - (vii) the over-or under-recoveries that may result from the modulation of air navigation charges in application of Article 16;
 - (viii) the over-or under-recoveries resulting from traffic variations;
 - (ix) for the first two reference periods, the over- or under-recoveries incurred by Member States up to and including the year 2011;
 - (x) a deduction of other revenue.
-

ANNEX V

CALCULATION OF THE TERMINAL SERVICE UNITS AND UNIT RATES**1. Calculation of terminal service units**

- 1.1. The terminal service unit shall be equal to the weight factor for the aircraft concerned.
- 1.2. The weight factor, expressed as a figure taken to two decimal places, shall be the quotient, obtained by dividing by fifty the number of metric tons in the highest maximum certified take-off weight of the aircraft, referred to in Annex IV point 1.5, to the power of 0,7.

2. Calculation of terminal unit rates

- 2.1. The terminal unit rate shall be calculated before the beginning of each year of the reference period.
 - 2.2. It shall be calculated by dividing the forecast number of total terminal service units for the relevant year as defined in the performance plan into the algebraic sum of the following elements:
 - (i) the determined costs, expressed in nominal terms, of the relevant year as defined in the performance plan;
 - (ii) the adjustment of the difference between forecasted and actual inflation as referred to in Article 7(1);
 - (iii) the recovery of restructuring costs, if authorised in accordance with Article 7(4);
 - (iv) the carry-overs resulting from the implementation of the traffic risk-sharing mechanism referred to in Article 13, if applicable;
 - (v) the carry-overs from the previous reference period resulting from the implementation of the cost sharing mechanism referred to in Article 14;
 - (vi) bonuses and penalties resulting from the financial incentive schemes referred to in Article 15;
 - (vii) the over-or under-recoveries that may result from the modulation of air navigation charges in application of Article 16;
 - (viii) the over-or under-recoveries resulting from traffic variations;
 - (ix) for the first two reference periods, the over- or under-recoveries incurred by Member States up to and including the year 2014;
 - (x) a deduction of other revenue.
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ANNEX VI

CHARGING MECHANISM

1. REPORTING TABLE

Member States as well as air navigation service providers shall each fill in the reporting table in this Annex for each charging zone under their responsibility and for each reference period. Member States shall also provide a consolidated table for each charging zone under their responsibility.

When a charging zone extends across the airspace of more than one Member State, they shall fill in the table jointly in accordance with the provisions of Article 5(4).

Table 2 - Unit rate calculation

Charging zone name : Entity name:	Period of reference : N - N+4
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Unit rate calculation	N	N+1	N+2	N+3	N+4
1. Determined costs in nominal terms and inflation adjustment 1.1 Determined costs in nominal terms - VFR excl. - Table 1 1.2 Actual inflation rate - Table 1 1.3 Forecast inflation rate - Table 1 1.4 Inflation adjustment ⁽¹⁾ : year n amount to be carried over 2. Forecast and actual total service units 2.1 Forecast total service units (performance plan) 2.2 Actual total service units 2.3 Actual / forecast total service units (in %) 3. Costs subject to traffic risk sharing 3.1 Determined costs in nominal terms - VFR excl. (reported from Table 1) 3.2 Inflation adjustment : amount carried over to year n 3.3 Traffic : amounts carried over to year n 3.4 Traffic risk sharing : add. revenue carried over to year n 3.5 Traffic risk sharing : revenues losses carried over to year n 3.6 Costs exempt from cost sharing : amounts carried over to year n 3.7 Bonus or penalty for performance 3.8 Over(-) or under(+) recoveries ⁽²⁾ : amounts carried over to year n 3.9 Total for the calculation of year n unit rate 3.10 Traffic risk sharing : add. rev. year n to be carried-over 3.11 Traffic risk sharing : revenue loss year n to be carried-over 3.12 Over/under recoveries from traffic variations n to be carried-over Parameters for traffic risk sharing 3.13 % additional revenue returned to users in year n+2 3.14 % loss of revenue borne by airspace users 4. Costs not subject to traffic risk sharing 4.1 Determined costs in nominal terms - VFR excl. (Table 1) 4.2 Inflation adjustment : amount carried over to year n 4.3 Traffic : amounts carried over to year n 4.4 Costs exempt from cost sharing : amounts carried over to year n 4.5 Restructuring costs : amounts carried over to year n 4.6 Over(-) or under(+) recoveries ⁽²⁾ : amounts carried over to year n 4.7 Total for the calculation of year n unit rate 4.8 Over/under recoveries from traffic variations n to be carried-over 5. Other revenues - applied unit rate (in national currency) 5.1 Total other revenues 5.3 of which Union assistance programmes 5.4 of which National public funding 5.5 Commercial activities 5.6 Other other revenues 5.7 Grand total for the calculation of year n unit rate 5.8 Year n unit rate (in national currency) 5.9 ANSP component of the unit rate 5.10 MET component of the unit rate 5.11 NSA-State component of the unit rate 5.12 Year n unit rate that would have applied without other revenues					

Costs, revenues and other amounts in '000 Euro - Service units in '000

⁽¹⁾ Cumulated impact of yearly differences between actual and forecast inflation – adjustment of the total determined costs

⁽²⁾ Over/under recoveries incurred up to the year of entry into force of the determined cost method

2. ADDITIONAL INFORMATION

In addition, Member States concerned shall collect and provide at least the following information:

- (a) description and rationale for establishment of the different charging zones, in particular with regard to terminal charging zones and potential cross-subsidies between airports;
 - (b) description of the policy on exemptions and description of the financing means to cover the related costs;
 - (c) description of the other revenues, if any, broken down between the different categories indicated in Article 2(10);
 - (d) description and explanation of incentives applied to users of air navigation services under Article 15;
 - (e) description and explanation of the modulation of air navigation charges applied under Article 16.
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ANNEX VII

COMPLEMENTARY INFORMATION

1. REPORTING TABLE

Member States shall fill in the reporting table in this Annex for each charging zone under their responsibility and for each year of the reference period.

Table 3 - Complementary Information

Charging zone name						Period of reference : N - N+4				
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PART A: Complementary Information on costs	N	N+1	N+2	N+3	N+4	N	N+1	N+2	N+3	N+4
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	Determined costs (performance plan)					Actual costs				
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Eurocontrol costs										
1.1 EUROCONTROL costs (Euro)										
1.2 Exchange rate (if applicable)										

Cost of common projects										
2.1 Total costs of common projects										
2.2 Common project 1										
2.3 Common project 2										
2.4 Common project ...										

Costs exempted from the cost sharing arrangements - Article 14(2)(b) (by nature)										
3.1 Staff										
3.2 Other operating costs										
3.3 Depreciation										
3.4 Cost of capital										
3.5 Exceptional items										
3.6 Total costs exempted from cost sharing										

Costs exempted from the cost sharing arrangements - Article 14(2)(b) (by factor/item)										
3.7 Pension										
3.8 Interest rates on loans										
3.9 National taxation law										
3.10 New cost item required by law										
3.11 International agreements										
3.12 Total costs exempted from cost sharing										

Restructuring costs, if authorised in accordance with Article 7(4)										
Planned costs (business case)						Actual costs (for information)				
4.1 Total restructuring costs										

PART B: Complementary information on adjustments	Amounts	Total C/O	Before RP	N	N+1	N+2	N+3	N+4	After RP
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Inflation adjustment Year N-2									
Inflation adjustment Year N-1									
Inflation adjustment Year N									
Inflation adjustment Year N+1									
Inflation adjustment Year N+2									
Inflation adjustment Year N+3									
Inflation adjustment Year N+4									
Total Inflation Adjustment									

Traffic balance Year N-2									
Traffic balance Year N-1									
Traffic balance Year N									
Traffic balance Year N+1									
Traffic balance Year N+2									
Traffic balance Year N+3									
Traffic balance Year N+4									
Total Traffic Adjustment									

Traffic risk sharing revenue Year N-2									
Traffic risk sharing revenue Year N-1									
Traffic risk sharing revenue Year N									
Traffic risk sharing revenue Year N+1									
Traffic risk sharing revenue Year N+2									
Traffic risk sharing revenue Year N+3									
Traffic risk sharing revenue Year N+4									
Total Traffic Risk sharing revenue adjustment									

Traffic risk sharing loss Year N-4								
Traffic risk sharing loss Year N-3								
Traffic risk sharing loss Year N-2								
Traffic risk sharing loss Year N-1								
Traffic risk sharing loss Year N								
Traffic risk sharing loss Year N+1								
Traffic risk sharing loss Year N+2								
Total Traffic Risk sharing loss adjustment								
Costs exempted from cost sharing Year N-5								
Costs exempted from cost sharing Year N-4								
Costs exempted from cost sharing Year N-3								
Costs exempted from cost sharing Year N-2								
Costs exempted from cost sharing Year N-1								
Total costs exempted from cost sharing								
O-u recoveries before determined costs Year 2005								
O-u recoveries before determined costs Year 2006								
O-u recoveries before determined costs Year 2007								
O-u recoveries before determined costs Year 2008								
O-u recoveries before determined costs Year 2009								
O-u recoveries before determined costs Year 2010								
O-u recoveries before determined costs Year 2011								
O-u recoveries before determined costs Year 2012 (TNC only)								
O-u recoveries before determined costs Year 2013 (TNC only)								
O-u recoveries before determined costs Year 2014 (TNC only)								
Total carry-overs								

2. ADDITIONAL INFORMATION

In addition, Member States shall provide at least the following information:

- (a) breakdown of the costs of common projects per individual project;
 - (b) description of the amounts resulting from uncontrollable costs factors by nature and by factor, including the rationale and the changes in underlying assumptions;
 - (c) description of the carry-overs of over- or under-recoveries incurred by Member States up to the year 2011 for *en route* charges and up to the year 2014 for terminal charges;
 - (d) description of carry-overs resulting from the traffic risk-sharing mechanism in accordance with Article 13;
 - (e) description of carry-overs resulting from the cost sharing mechanism in accordance with Article 14(2).
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