

COMMISSION REGULATION (EC) No 2150/2005
of 23 December 2005
laying down common rules for the flexible use of airspace
(Text with EEA relevance)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Regulation (EC) No 551/2004 of the European Parliament and of the Council of 10 March 2004 on the organisation and use of airspace in the single European sky ⁽¹⁾ and in particular Article 7(3) thereof,

Having regard to Regulation (EC) No 549/2004 of the European Parliament and the Council of 10 March 2004 laying down the framework for the creation of the single European sky (the framework Regulation) ⁽²⁾, and in particular Article 8(2) thereof,

Whereas:

- (1) Flexible use of airspace is an airspace management concept described by the International Civil Aviation Organisation (ICAO) and developed by the European Organisation for the Safety of Aviation (Eurocontrol), according to which airspace should not be designated as either purely civil or purely military airspace, but should rather be considered as one continuum in which all users' requirements have to be accommodated to the maximum extent possible.
- (2) Eurocontrol has been mandated in accordance with Article 8(1) of Regulation (EC) No 549/2004 to assist the Commission in the development of implementing rules on flexible use of airspace. This Regulation takes full account of the resulting mandate report of 30 December 2004 issued by Eurocontrol.
- (3) This Regulation does not cover military operations and training as referred to in Article 1(2) of Regulation (EC) No 549/2004.
- (4) The Member States undertook, in a Statement on Military Issues related to the Single European Sky ⁽³⁾, to cooperate with each other, taking into account national military requirements, in order to ensure that the concept of flexible use of airspace is fully and uniformly applied in all Member States by all users of airspace.
- (5) The report issued jointly by the Eurocontrol Performance Review Unit and the Eurocontrol agency in October

2001 states that there is a significant scope for improving the current application of the flexible use of airspace within Europe. Common rules for giving effect to that improvement should now be adopted.

- (6) The of the flexible use of airspace concept covers also airspace over the high seas. Its application should therefore be without prejudice to the rights and duties of Member States under the Convention on International Civil Aviation (Chicago Convention) of 7 December 1944 and its annexes, or to the 1982 UN Convention on the Law of the Sea.
- (7) There are activities which require the reservation of a volume of airspace for their exclusive or specific use for determined periods, owing to the characteristics of their flight profile or their hazardous attributes and the need to ensure effective and safe separation from non-participating air traffic.
- (8) Effective and harmonised application of flexible use of airspace throughout the Community needs clear and consistent rules for civil-military coordination which should take into account all users' requirements and the nature of their various activities.
- (9) Efficient civil-military coordination procedures should rely on rules and standards to ensure efficient use of airspace by all users.
- (10) It is essential to further cooperation between neighbouring Member States and to take into account cross-border operations when applying the concept of flexible use of airspace.
- (11) Differences in the organisation of civil-military cooperation in the Community restrict uniform and timely airspace management. It is therefore essential to identify the persons and/or organisations which are responsible for the application of the flexible use of airspace concept in every Member State. This information should be made available to the Member States.
- (12) Consistent procedures for civil-military coordination and use of common airspace are an essential condition for the establishment of functional airspace blocks as defined in Regulation (EC) No 549/2004.

⁽¹⁾ OJ L 96, 31.3.2004, p. 20.

⁽²⁾ OJ L 96, 31.3.2004, p. 1.

⁽³⁾ OJ L 96, 31.3.2004, p. 9.

- (13) The flexible use of airspace addresses airspace management at strategic, pre-tactical and tactical levels, which are separate, but closely interdependent management functions and therefore need to be performed coherently to ensure efficient use of airspace.
- (14) Air-traffic management programmes under development in European level cooperation should allow for the progressive achievement of consistency between airspace management, air traffic flow management and air traffic services.
- (15) Where various aviation activities occur in the same airspace but meet different requirements, their coordination should seek both the safe conduct of flights and the optimum use of available airspace.
- (16) Accuracy of information on airspace status and on specific air traffic situations and timely distribution of this information to civil and military controllers has a direct impact on the safety and efficiency of operations.
- (17) Timely access to up-to-date information on airspace status is essential for all parties wishing to take advantage of airspace structures made available when filing or re-filing their flight plans.
- (18) The regular assessment of airspace use is an important way of increasing confidence between civil and military service providers and users and is an essential tool for improving airspace design and airspace management.
- (19) The annual report on application of the flexible use of airspace, as referred to in Article 7(2) of Regulation (EC) No 551/2004, should contain relevant information, gathered in the light of the original objectives and with the sole view of better accommodating users' requirements.
- (20) A transitional period to meet requirements for coordination between civil air traffic services units and military air traffic services units and/or controlling military units should be provided.
- (21) The measures provided for in this Regulation are in accordance with the opinion of the Single Sky Committee established by Article 5(1) of Regulation (EC) No 549/2004,

HAS ADOPTED THIS REGULATION:

Article 1

Subject-matter

This Regulation reinforces and harmonises the application, within the Single European Sky, of the concept of the flexible

use of airspace as defined in Article 2 point (22) of Regulation (EC) No 549/2004, in order to facilitate airspace management and air traffic management within the limits of the common transport policy.

In particular, this Regulation sets out rules to ensure better cooperation between civil and military entities responsible for air traffic management that operate in the airspace under the responsibility of Member States.

Article 2

Definitions

1. For the purpose of this Regulation the definitions established by Regulation (EC) No 549/2004 shall apply.

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

- (a) 'airspace management cell (AMC)' means a cell responsible for the day-to-day management of the airspace under the responsibility of one or more Member States;
- (b) 'airspace reservation' means a defined volume of airspace temporarily reserved for exclusive or specific use by categories of users;
- (c) 'airspace restriction' means a defined volume of airspace within which, variously, activities dangerous to the flight of aircraft may be conducted at specified times (a 'danger area'); or such airspace situated above the land areas or territorial waters of a State, within which the flight of aircraft is restricted in accordance with certain specified conditions (a 'restricted area'); or airspace situated above the land areas or territorial waters of a State, within which the flight of aircraft is prohibited (a 'prohibited area');
- (d) 'airspace structure' means a specific volume of airspace designed to ensure the safe and optimal operation of aircraft;
- (e) 'air traffic services unit' (ATS unit) means a unit, civil or military, responsible for providing air traffic services;
- (f) 'civil-military coordination' means the coordination between civil and military parties authorised to make decisions and agree a course of action;
- (g) 'controlling military unit' means any fixed or mobile military unit handling military air traffic and/or pursuing other activities which, owing to their specific nature, may require an airspace reservation or restriction;

- (h) 'cross-border airspace' means an airspace structure extending across national borders and/or the boundaries of flight information regions;
- (i) 'flight intention' means the flight path and associated flight data describing the planned trajectory of a flight to its destination, as updated at any moment;
- (j) 'flight path' means the path of an aircraft through the air, defined in three dimensions;
- (k) 'real-time' means the actual time during which a process or event occurs;
- (l) 'separation' means spacing between aircraft, levels or tracks;
- (m) 'users' means civil or military aircraft operating in the air as well as any other parties requiring airspace.

Article 3

Principles

The concept of 'flexible use of airspace' shall be governed by the following principles:

- (a) coordination between civil and military authorities shall be organised at the strategic, pre-tactical and tactical levels of airspace management through the establishment of agreements and procedures in order to increase safety and airspace capacity, and to improve the efficiency and flexibility of aircraft operations;
- (b) consistency between airspace management, air traffic flow management and air traffic services shall be established and maintained at the three levels of airspace management enumerated in point (a) in order to ensure, for the benefit of all users, efficiency in airspace planning, allocation and use;
- (c) the airspace reservation for exclusive or specific use of categories of users shall be of a temporary nature, applied only during limited periods of time based on actual use and released as soon as the activity having caused its establishment ceases;
- (d) Member States shall develop cooperation for the efficient and consistent application of the concept of flexible use of airspace across national borders and/or the boundaries of flight information regions, and shall in particular address cross-border activities; this cooperation shall cover all relevant legal, operational and technical issues;
- (e) air traffic services units and users shall make the best use of the available airspace.

Article 4

Strategic airspace management (level 1)

1. Member States shall perform the following tasks:
 - (a) ensure the overall application of the flexible use of airspace concept at a strategic, pre-tactical and tactical level;
 - (b) regularly review users' requirements;
 - (c) approve the activities which require airspace reservation or restriction;
 - (d) define temporary airspace structures and procedures to offer multiple airspace reservation and route options;
 - (e) establish criteria and procedures providing for the creation and the use of adjustable lateral and vertical limits of the airspace required for accommodating diverse variations of flight paths and short-term changes of flights;
 - (f) assess the national airspace structures and route network with the aim of planning for flexible airspace structures and procedures;
 - (g) define the specific conditions under which the responsibility for separation between civil and military flights rests on the air traffic services units or controlling military units;
 - (h) develop cross-border airspace use with neighbouring Member States where needed by the traffic flows and users' activities;
 - (i) coordinate their airspace management policy with those of neighbouring Member States to jointly address use of airspace across national borders and/or the boundaries of flight information regions;
 - (j) establish and make available airspace structures to users in close cooperation and coordination with neighbouring Member States where the airspace structures concerned have a significant impact on the traffic across national borders and/or the boundaries of flight information regions, with a view to ensuring optimum use of airspace for all users throughout the Community;
 - (k) establish with neighbouring Member States one common set of standards for separation between civil and military flights for cross-border activities;

- (l) set up consultation mechanisms between the persons or organisations as referred to in paragraph 3 and all relevant partners and organisations to ensure that users' requirements are properly addressed;
- (m) assess and review airspace procedures and performance of flexible use of airspace operations;
- (n) establish mechanisms to archive data on the requests, allocation and actual use of airspace structures for further analysis and planning activities.

The conditions referred to in point (g) shall be documented and taken into account in the safety assessment referred to in Article 7.

2. In those Member States where both civil and military authorities are responsible for or involved in airspace management, the tasks set out in paragraph 1 shall be performed through a joint civil-military process.

3. Member States shall identify and notify to the Commission those persons or organisations which are responsible for the execution of tasks listed in paragraph 1. The Commission shall maintain and publish a list of all persons or organisations identified in order to further the cooperation between Member States.

Article 5

Pre-tactical airspace management (level 2)

1. Member States shall appoint or establish an airspace management cell to allocate airspace in accordance with the conditions and procedures defined in Article 4(1).

In those Member States where both civil and military authorities are responsible for or involved in airspace management, this cell shall take the form of a joint civil military cell.

2. Two or more Member States may establish a joint airspace management cell.

3. Member States shall ensure that adequate supporting systems are put in place to enable the airspace management cell to manage airspace allocation and to communicate in good time the airspace availability to all affected users, airspace management cells, air traffic service providers and all relevant partners and organisations.

Article 6

Tactical airspace management (level 3)

1. Member States shall ensure the establishment of civil-military coordination procedures and communication facilities between appropriate air traffic service units and controlling military units permitting mutual provision of airspace data to

allow the real-time activation, deactivation or reallocation of the airspace allocated at pre-tactical level.

2. Member States shall ensure that the relevant controlling military units and air traffic services units exchange any modification of the planned activation of airspace in a timely and effective manner and notify to all affected users the current status of the airspace.

3. Member States shall ensure the establishment of coordination procedures and the establishment of supporting systems between air traffic service units and controlling military units in order to ensure safety when managing interactions between civil and military flights.

4. Member States shall ensure that coordination procedures are established between civil and military air traffic service units so as to permit direct communication of relevant information to resolve specific traffic situations where civil and military controllers are providing services in the same airspace. This relevant information shall be made available, in particular where it is required for safety reasons, to civil and military controllers and controlling military units through a timely exchange of flight data, including the position and flight intention of the aircraft.

5. Where cross-border activities take place, Member States shall ensure that a common set of procedures to manage specific traffic situations and to enhance real time airspace management is agreed between civil air traffic services units and military air traffic services units and/or controlling military units which are concerned by those activities.

Article 7

Safety assessment

Member States shall, in order to maintain or enhance existing safety levels, ensure that, within the context of a safety management process, a safety assessment, including hazard identification, risk assessment and mitigation, is conducted, before they introduce any changes to the operations of the flexible use of airspace.

Article 8

Reporting

When reporting annually on the application of the flexible use of airspace as referred to in Article 7(2) of Regulation (EC) No 551/2004, Member States shall provide the elements detailed in the Annex to this Regulation.

Article 9

Compliance monitoring

Member States shall monitor compliance with this Regulation by means of inspections, surveys and safety audits.

*Article 10***Entry into force**

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

Article 6 shall apply 12 months after the day of entry into force of this Regulation.

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

Done at Brussels, 23 December 2005.

For the Commission
Jacques BARROT
Vice-President

ANNEX

LIST OF ELEMENTS REQUIRED FOR THE ANNUAL REPORT ON THE APPLICATION OF THE FLEXIBLE USE OF AIRSPACE

- General description of the national organisation and responsibilities at level 1, level 2 and level 3 of the flexible use of airspace concept.
 - Evaluation of the functioning of agreements, procedures and supporting systems established at the strategic, pre-tactical and tactical levels of airspace management. This evaluation shall be conducted with regard to safety, airspace capacity, efficiency and flexibility of aircraft operations of all users.
 - Problems encountered in the implementation of this Regulation, actions taken and need for changes.
 - Outcome of national inspections, surveys and safety audits.
 - Cooperation between Member States on airspace management and especially on the creation and management of cross-border airspace and cross-border activities.
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