

II

(Non-legislative acts)

REGULATIONS

COMMISSION IMPLEMENTING REGULATION (EU) No 409/2013

of 3 May 2013

on the definition of common projects, the establishment of governance and the identification of incentives supporting the implementation of the European Air Traffic Management Master Plan

(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⁾, and in particular Article 15a thereof,

Whereas:

- (1) The single European sky regulatory framework comprises the measures referred to in Article 3(1) of Regulation (EC) No 549/2004 of the European Parliament and of the Council ⁽²⁾.
- (2) The application of single European sky regulatory framework shall be without prejudice to the Member States' responsibilities in accordance with Article 1(2) of Regulation (EC) No 549/2004.
- (3) In its Communication of 22 December 2011 ⁽³⁾, the Commission announced its intention to set out governance and incentive mechanisms for the deployment of SESAR (Single European Sky Air Traffic Management Research and development) based on Article 15a of Regulation (EC) No 550/2004. These mechanisms include common projects, which should assist the successful implementation of the ATM Master Plan; guidance on common projects, which should establish a binding framework on how common projects can support such implementation; and governance mechanisms which should ensure timely, coordinated and synchronised deployment by setting out a clear allocation of responsibilities amongst stakeholders.

(4) Regulation (EC) No 550/2004 aims to help airspace users and air navigation service providers improve collective air navigation infrastructure, the provision of air navigation services and the use of airspace by working together in common projects. The aim is also to speed up the deployment of the Single European Sky Air Traffic Management Research and Development (SESAR) project.

(5) SESAR is the project set up to modernise European air traffic management system. It is the technological pillar of the single European sky initiative.

(6) SESAR is composed of three phases: the definition phase to define the content of the next generation of ATM systems; the development phase to develop and validate the new generation of technological systems, components and operational procedures; and the deployment phase that consists in the industrialisation and implementation of the new air traffic management systems.

(7) The European Air Traffic Management (ATM) Master Plan (hereinafter referred to as the ATM Master Plan), produced during the definition phase of SESAR is the agreed roadmap to bring ATM research and development to the deployment phase.

(8) The ATM Master Plan outlines the essential operational changes that are required to help achieve the Single European Sky (SES) performance objectives. It is a key tool for SESAR deployment and provides the basis for timely, coordinated and synchronised deployment of the new ATM functionalities.

(9) Deployment objectives and priorities should take into account also aspects of Network operations defined in the Network Strategy Plan, which includes the performance targets consistent with the European

⁽¹⁾ OJ L 96, 31.3.2004, p. 10.

⁽²⁾ OJ L 96, 31.3.2004, p. 1.

⁽³⁾ COM(2011) 923 final.

Union-wide performance targets and the actions planned to meet the targets, and in the Network Operations plan defined in Commission Regulation (EU) No 677/2011 ⁽¹⁾.

- (10) A timely, coordinated and synchronised deployment of SESAR is essential to achieve the SES performance objectives and the overall economic benefits expected from ATM modernisation.
- (11) Common projects provided for in Article 15a of Regulation (EC) No 550/2004 should help boost the performance of the European ATM network (EATMN) and demonstrate overall positive cost-benefit analysis, mindful of any potential negative impacts for specific regions or stakeholders.
- (12) In order to ensure that common projects are implemented and monitored in a timely, coordinated and synchronised manner, making optimal use of the instruments and bodies identified in the single European sky regulatory framework, a governance of SESAR deployment should be established.
- (13) In order to govern SESAR deployment effectively and ensure credibility of the deployment process, the operational stakeholders accountable for the performance of the ATM system should be involved in deployment governance.
- (14) Operational stakeholders investing in SESAR deployment should play a leading role in managing and implementing deployment activities, preferably through a single entity, while avoiding any conflict of interest.
- (15) The manufacturing industry should play an advisory role in SESAR deployment to ensure consistency with industrialisation and timely availability of equipment.
- (16) The Commission should oversee deployment activities making sure they follow the SES objectives and safeguard the public interest, by establishing appropriate reporting and monitoring mechanisms making the best use of existing instruments such as the European and Local Single Sky Implementation (ESSIP Plan and Report and LSSIP documents).
- (17) The Commission should keep the Single Sky Committee fully informed on the process for the selection of the deployment manager, for the approval of the deployment programme and for the selection of implementation projects. The Single Sky Committee should be consulted on these issues without prejudice to the rules and procedures laid down in the relevant Union funding programmes.
- (18) The European Organisation for Civil Aviation Equipment (Eurocae), which produces technical material and performs preliminary and ancillary work in connection

with European standardisation, should assist the Commission in monitoring and facilitating standardisation processes and in promoting the use of European standards.

- (19) While the deployment of SESAR projects in relation to the military remains the responsibility of the States concerned, there should be coordination with the military to avoid any adverse impact on defence capabilities.
- (20) To encourage early investment from stakeholders and mitigate deployment aspects for which the cost-benefit analysis is less positive, implementation projects that aim to deploy common projects should be eligible for Union funding and other incentives, in accordance with the rules and procedures of Union funding programmes and incentive schemes.
- (21) As far as possible, synergies shall be sought between SESAR deployment and Functional Airspace Blocks (FABs).
- (22) 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 PRINCIPLES

Article 1

Subject matter and scope

1. This Regulation defines common projects, referred to in Article 15a of Regulation (EC) No 550/2004, explains how they shall be governed and identifies incentives for their deployment.
2. This Regulation shall apply to the European Air Traffic Management Network (EATMN).

Article 2

Definitions

For the purpose of this Regulation, the definitions in Article 2 of Regulation (EC) No 549/2004 and in Article 2 of Regulation (EU) No 677/2011 shall apply.

In addition the following definitions shall apply:

- (1) 'SESAR Joint Undertaking' means the body, established by Council Regulation (EC) No 219/2007 ⁽²⁾, entrusted with the task of managing and coordinating the development phase of the SESAR project;
- (2) 'charging scheme' means the scheme established by Commission Regulation (EC) No 1794/2006 ⁽³⁾;

⁽¹⁾ OJ L 185, 15.7.2011, p. 1.

⁽²⁾ OJ L 64, 2.3.2007, p. 1.

⁽³⁾ OJ L 341, 7.12.2006, p. 3.

- (3) 'ATM functionality' means a group of ATM operational functions or services related to trajectory, airspace and surface management or to information sharing within the en-route, terminal, airport or network operating environments;
- (4) 'SESAR deployment' means the activities and processes relating to the industrialisation and implementation of ATM functionalities identified in the ATM Master Plan;
- (5) 'industrialisation' of ATM functionalities means the activities and processes, following their validation that include standardisation, certification and production by the manufacturing industry (ground and airborne equipment manufacturers);
- (6) 'implementation' of ATM functionalities means the procurement, installation and putting into service of equipment and systems, including associated operational procedures, carried out by operational stakeholders;
- (7) 'essential operational change' means an Air Traffic Management (ATM) operational change that provides significant network performance improvements to the operational stakeholders, as referred to in the ATM Master Plan;
- (8) 'performance scheme' means a scheme established by Commission Regulation (EU) No 691/2010 ⁽¹⁾;
- (9) 'European Union-wide performance targets' means the targets referred to in Article 9 of Regulation (EU) No 691/2010;
- (10) 'operational stakeholders' means civil and military: airspace users, air navigation service providers and airport operators.

Article 3

ATM Master Plan

1. The ATM Master Plan is the roadmap driving the modernisation of the European ATM system and connecting SESAR research and development with deployment. It shall be the key SES instrument for the seamless operation of the EATMN and the timely, coordinated and synchronised SESAR deployment.

2. The updates of the ATM Master Plan shall contribute to achieving the European Union-wide performance targets and maintain consistency between these targets, SESAR deployment and SESAR research, development, innovation and validation activities. For this purpose, the ATM Master Plan updates shall take into account the Network Strategy Plan and the Network Operation plan.

⁽¹⁾ OJ L 201, 3.8.2010, p. 1.

CHAPTER II

COMMON PROJECTS

Article 4

Purpose and content

1. Common projects shall aim to deploy in a timely, coordinated and synchronised way ATM functionalities that will achieve the essential operational changes.
2. Common projects shall be consistent with and contribute to the European Union-wide performance targets.
3. Common projects shall identify the ATM functionalities that:
 - (a) having reached the appropriate level of industrialisation, are mature for implementation;
 - (b) require synchronised deployment.
4. The maturity of ATM functionalities shall be demonstrated, inter alia, on the basis of the results of validation carried out by the SESAR Joint Undertaking, the status of standardisation and certification processes and an assessment of their interoperability, also in relation to the ICAO Global Air Navigation Plan and relevant ICAO material.
5. The need for synchronised deployment of ATM functionalities shall be assessed on the basis of:
 - (a) a definition of their geographical scope and planning, including deployment target dates;
 - (b) an identification of the operational stakeholders required to deploy them;
 - (c) transitional measures for their progressive deployment.
6. Common projects shall also:
 - (a) demonstrate a positive business case for the EATMN, based on an independent cost-benefit analysis, and identify any potential local or regional negative impact for any specific category of operational stakeholders;
 - (b) identify incentives for deployment, referred to in Section 3 of Chapter III, in particular to mitigate negative impacts on a specific geographical area or category of operational stakeholders;
 - (c) refer to the implementing rules for interoperability and safety under Regulation (EC) No 552/2004 of the European Parliament and of the Council ⁽²⁾ and Regulation (EC) No 216/2008 of the European Parliament and of the Council ⁽³⁾. In particular, reference shall be made to

⁽²⁾ OJ L 96, 31.3.2004, p. 26.

⁽³⁾ OJ L 79, 19.3.2008, p. 1.

Community specifications under Regulation (EC) No 552/2004 and to acceptable means of compliance and certification specifications under Regulation (EC) No 216/2008;

- (d) identify any need for new implementing rules for interoperability and safety, Community specifications and civil standards to support their deployment and their applicability to the military taking into consideration civil and military systems' equivalence; and
- (e) take account of the relevant deployment elements specified in the Network Strategy Plan and the Network Operations Plan of the Network Manager.

Article 5

Setup, adoption and implementation

1. The Commission shall set up proposals for common projects in accordance with the requirements of Article 4.
2. The Commission shall be assisted by the Network Manager, the European Aviation Safety Agency, the Performance Review Body within their respective roles and competencies as defined in the SES regulatory framework, and by the SESAR Joint undertaking, Eurocontrol, the European standardisation organisations, Eurocae and the deployment manager. These bodies shall involve the operational stakeholders and manufacturing industry.
3. The Commission shall consult the stakeholders in accordance with Articles 6 and 10 of Regulation (EC) No 549/2004 including through the European Defence Agency, within its remit to facilitate the coordination of military views, and the consultative group of experts on the social dimension of the single European sky on its proposals for common projects.
4. The Commission shall ensure that proposals for common projects are endorsed by the airspace users and the ground operational stakeholders that are required to implement a specific common project. To this end, airspace users shall set up a group made up of representatives of airspace users.
5. The Commission shall adopt common projects and any amendments to them in accordance with the procedure referred to in Article 15a(3) of Regulation (EC) No 550/2004.
6. Common projects shall be implemented through implementation projects and in accordance with the deployment programme defined in Chapter III, Section 2.

Article 6

Monitoring

1. The Commission shall monitor the implementation of common projects and their impact on the performance of the EATMN through specific reporting requirements. Those requirements shall be set out by the Commission under the framework partnership referred to in Article 9(5).

2. In monitoring the effectiveness of common projects with regard to performance of the EATMN, the Commission shall make best use of existing monitoring and reporting instruments and shall be assisted, in particular, by the Network Manager and the Performance Review Body in accordance with Regulations (EU) No 677/2011 and (EU) No 691/2010 and by the European Aviation Safety Agency regarding the safety aspects.

3. The Single Sky Committee shall be informed on the implementation of common projects.

CHAPTER III

DEPLOYMENT GOVERNANCE AND INCENTIVES

SECTION 1

Deployment Governance

Article 7

General principles

1. Deployment governance shall ensure the timely, coordinated and synchronised implementation of common projects while interfacing with and facilitating industrialisation.
2. Deployment governance shall be composed of three levels: policy level; management level; and implementation level.

Article 8

Policy level

1. The policy level shall be responsible for overseeing SESAR deployment, ensuring that it is in line with the single European sky regulatory framework and safeguards the public interest.
2. The Commission shall be responsible for the policy level, in particular for:
 - (a) setting up and adopting common projects in accordance with Article 5;
 - (b) selecting the deployment manager, approving the deployment programme and selecting the implementation projects;
 - (c) managing the Union funds supporting the deployment manager and the implementation projects;
 - (d) identifying incentives for SESAR deployment and enforcing the framework partnership agreement concluded with the deployment manager in accordance with Article 9(5) and any relevant agreements for implementation projects;
 - (e) promoting the participation of the civil and military stakeholders;
 - (f) developing cooperation and coordination with third countries;

- (g) establishing coordination with standardisation and certification organisations and bodies to facilitate industrialisation and promote interoperability of ATM functionalities;
- (h) monitoring the deployment of common projects and their contribution to achieving the European Union-wide performance targets;
- (i) issuing recommendations to operational stakeholders and Member States.

3. The Commission shall be assisted by the Single Sky Committee, the Industry Consultation Body, the consultative group of experts on the social dimension of the single European sky, the National Supervisory Authorities and the Performance Review Body, within their respective roles and competencies as defined in the single European sky regulatory framework. The Commission may consult the Single Sky Committee on any matter concerning the application of this Regulation.

4. The Commission shall also involve, within their respective competencies and roles:

- (a) Eurocontrol, through cooperative arrangements between Eurocontrol and the Union, to take full advantage of its expertise and its civil-military and pan-European competencies;
- (b) the European Defence Agency, to facilitate the coordination of military views from and in support of the Member States and the relevant international military organisations on SESAR deployment and inform military planning mechanisms of the requirements stemming from SESAR deployment;
- (c) the European Aviation Safety Agency, to ensure that safety issues are integrated into the implementation of common projects, in particular when developing the required technical rules, such as those relating to the design, production and maintenance of systems and constituents for air traffic management and air navigation services, as well as for the personnel and organisations involved therein;
- (d) the SESAR Joint Undertaking, to ensure continuous connection between SESAR research, development, innovation and validation activities and SESAR deployment and to ensure that common projects and the deployment programme are in line with the ATM Master Plan;
- (e) The European Standardisation Organisations and Eurocae, the latter in particular to facilitate and monitor industrial standardisation processes and the use of the resulting standards.

Article 9

Management level

1. The deployment manager shall be responsible for the management level.
2. The deployment manager shall, in particular, be responsible for:
 - (a) developing, proposing, maintaining and implementing the deployment programme, in accordance with Section 2;
 - (b) associating the operational stakeholders that are required to implement common projects;
 - (c) establishing mechanisms and decision-making processes that ensure efficient synchronisation and overall coordination of the implementation projects and the related investment in line with the deployment programme;
 - (d) ensuring effective management of risks and conflict of interest;
 - (e) advising the Commission on issues related to the implementation of common projects and to the setting up new common projects;
 - (f) implementing Commission decisions and ensuring and monitoring their implementation by the implementation level;
 - (g) identifying the most appropriate financing mechanisms combining public and private funding;
 - (h) monitoring implementation of the deployment programme;
 - (i) reporting to the Commission;
 - (j) ensuring appropriate coordination with National Supervisory Authorities.

3. The deployment manager shall be composed of groupings of operational stakeholders or individual operational stakeholders, including from third countries, under the conditions defined in the relevant Union funding programmes. Operational stakeholders may participate in the deployment manager through FAB structures.

4. The deployment manager shall demonstrate, inter alia, its capacity to:

- (a) represent operational stakeholders that are required to implement common projects;
- (b) manage multi-national implementation programmes;
- (c) understand funding and financing mechanisms and financial programme management; and
- (d) use existing structures to involve all operational stakeholders.

5. The selection of the members of the deployment manager by the Commission shall take the form of the award of a framework partnership following a call for proposals in accordance with Article 178 of the Commission Delegated Regulation (EU) No 1268/2012 of 29 October 2012 on the rules of application of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union ⁽¹⁾ (Rules of Application). The call for proposals shall define the objectives, requirements and the criteria for the selection of the members of the deployment manager in accordance with the Rules of Application. The Single Sky Committee shall be informed on the process of selection of the deployment manager.

6. Members of the deployment manager shall carry out at least one implementation project or part of it.

7. The deployment manager shall make appropriate cooperative arrangements with the Network Manager, the SESAR Joint Undertaking and the military. The appropriate cooperative arrangements shall be submitted to the Commission for approval. The cooperation shall be as follows:

(a) the deployment manager and the Network Manager shall cooperate to ensure their tasks are fulfilled without any form of duplication or competition, in particular, for the deployment aspects that have an impact on the network infrastructure, airspace organisation and performance as well as coherence with the Network Strategy Plan and the Network Operations Plan; the Network Manager shall also support, within its mandate, the members of the deployment manager in accordance with Articles 4(1)(i) and 4(3)(b) of Regulation (EU) No 677/2011;

(b) the deployment manager shall cooperate with the SESAR Joint Undertaking to ensure the necessary connections between SESAR research, development, innovation and validation activities and SESAR deployment and shall consult with the SESAR Joint Undertaking on the priorities and the progress made during the development phase on issues related to industrialisation and to ensure consistency with the ATM Master Plan;

(c) the deployment manager shall coordinate with the military to avoid any adverse impact on national and collective defence capabilities.

8. The deployment manager shall duly take into account the opinion of the entities referred to in paragraph 7 in its decisions that may impact the activities of these entities.

9. In the event of disagreement between the deployment manager and the entities referred to in paragraph 7 the deployment manager shall submit the matter to the Commission for a decision. The deployment manager shall comply with the Commission's decision.

10. The deployment manager shall seek assistance from the manufacturing industry, through cooperative arrangements, which shall be communicated to the Commission, to receive, inter alia, information on the industrialisation of products.

11. Subject to the availability of funds and under the conditions set out in the relevant Union funding Programme, the Commission shall provide financial support to the deployment manager solely for the execution of its tasks referred to in paragraph 2.

Article 10

Implementation level

1. The implementation level consists of the implementation projects selected by the Commission to implement common projects in line with the deployment programme.

2. Implementation projects shall be selected by the Commission through calls for proposals to implement the deployment programme and in accordance with the rules and procedures of relevant Union funding programmes.

3. The proposals for implementation projects shall take due account of the maturity of the industrialisation processes for these projects, based on information provided by the manufacturing industry, in particular on the impact of the implementation projects on legacy ATM systems, technical feasibility, cost estimates and roadmaps for technical solutions.

4. The implementation projects and their execution shall comply with the conditions agreed on with the Commission.

SECTION 2

Deployment programme

Article 11

Purpose

1. The deployment programme shall provide a comprehensive and structured work plan of all activities necessary to implement technologies, procedures and best practices required to implement common projects. It shall organise these activities in implementation projects identifying the associated risks and mitigation actions, the geographical scope, the timeframe and the operational stakeholders responsible for carrying out the implementation projects.

2. The deployment programme shall constitute the reference for the work of the Management and Implementation levels.

3. The deployment programme shall be part of the framework partnership agreement and, as such, the members of the deployment manager shall commit to implement it.

⁽¹⁾ OJ L 362, 31.12.2012, p. 1.

*Article 12***Establishment and implementation**

1. The deployment manager shall submit the proposal for the deployment programme and any proposals for amendments to the Commission for approval.
2. In preparing the proposal for the deployment programme or proposals to amend it, the deployment manager shall coordinate with the Network Manager, the SESAR Joint Undertaking and the military in accordance with Article 9(7).
3. Upon adoption of each common project the Commission shall request the deployment manager to adapt the deployment programme.

SECTION 3

Incentives*Article 13***Union Funding**

1. Union funding to support SESAR deployment shall focus on implementation projects provided for in Article 10, selected for Union funding in accordance with the rules and procedures of the relevant Union funding programmes.
2. The Commission shall make contractual arrangements covering the implementation projects selected to receive

Union funding. These arrangements shall define penalties for non-execution of the deployment programme and non-execution of the implementation projects.

*Article 14***Other Incentives**

1. Incentives in accordance with Regulations (EC) No 1794/2006 and (EU) No 691/2010 for SESAR deployment may be identified when establishing common projects.
2. Union funding granted in accordance with Article 13 shall be considered as 'other revenue' in accordance with Article 2(k) of Regulation (EC) No 1794/2006.

CHAPTER IV

FINAL PROVISIONS*Article 15***Review**

The Commission shall review the implementation of common projects by the end of the second reference period established by Article 7 of Regulation (EU) No 691/2010.

*Article 16***Entry into force**

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

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

Done at Brussels, 3 May 2013.

For the Commission

The President

José Manuel BARROSO
