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*****II**

RECOMMENDATION FOR SECOND READING

on the Council common position with a view to the adoption of the regulation of the European Parliament and of the Council laying down the framework for the creation of the Single European Sky ('the framework regulation')
(15851/3/2002 – C5-0138/2003 – 2001/0060(COD))

Committee on Regional Policy, Transport and Tourism

Rapporteur: Giovanni Claudio Fava

Symbols for procedures

- * Consultation procedure
majority of the votes cast
- **I Cooperation procedure (first reading)
majority of the votes cast
- **II Cooperation procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- *** Assent procedure
*majority of Parliament's component Members except in cases
covered by Articles 105, 107, 161 and 300 of the EC Treaty and
Article 7 of the EU Treaty*
- ***I Codecision procedure (first reading)
majority of the votes cast
- ***II Codecision procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- ***III Codecision procedure (third reading)
majority of the votes cast, to approve the joint text

(The type of procedure depends on the legal basis proposed by the Commission)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

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PROCEDURAL PAGE

At the sitting of 3 September 2002 Parliament adopted its position at first reading on the proposal for a regulation of the European Parliament and of the Council laying down the framework for the creation of the Single European Sky ('the framework regulation') (COM(2001) 123 – 2001/0060 (COD)).

At the sitting of 27 March 2003 the President of Parliament announced that the common position had been received and referred to the Committee on Regional Policy, Transport and Tourism (15851/3/2002 – C5-0138/2003).

The committee had appointed Giovanni Claudio Fava rapporteur at its meeting of 20 November 2001.

It considered the common position and draft recommendation for second reading at its meetings of 24 April, 21 May and 11-12 June 2003.

At the last meeting it adopted the draft legislative resolution by 40 votes to 4, with 3 abstentions.

The following were present for the vote: Luciano Caveri, chairman; Rijk van Dam and Helmuth Markov, vice-chairmen; Giovanni Claudio Fava, rapporteur; Emmanouil Bakopoulos, Carlos Bautista Ojeda (for Josu Ortuondo Larrea), Rolf Berend, Philip Charles Bradbourn, Luigi Cocilovo, Gerard Collins, Jean-Maurice Dehousse (for Danielle Darras), Jan Dhaene, Alain Esclopé, Markus Ferber (for Reinhard Rack), Jacqueline Foster, Jean-Claude Fruteau (for Gilles Savary), Mathieu J.H. Grosch, Konstantinos Hatzidakis, Ewa Hedkvist Petersen, Juan de Dios Izquierdo Collado, Georg Jarzembowski, Elisabeth Jeggle (for Dana Rosemary Scallon), Dieter-Lebrecht Koch, Giorgio Lisi, Nelly Maes, Sérgio Marques, Emmanouil Mastorakis, Erik Meijer, Rosa Miguélez Ramos, Enrique Monsonís Domingo, Francesco Musotto, Wilhelm Ernst Piecyk, Giovanni Pittella (for Garrelt Duin), Samuli Pohjamo, José Javier Pomés Ruiz, Carlos Ripoll y Martínez de Bedoya, Agnes Schierhuber (for Ari Vatanen), Ingo Schmitt, Renate Sommer, Dirk Sterckx, Ulrich Stockmann, Margie Sudre, Hannes Swoboda (for John Hume), Joaquim Vairinhos, Herman Vermeer, Mark Francis Watts and Brigitte Wenzel-Perillo (for Felipe Camisón Asensio).

The recommendation for second reading was tabled on 13 June 2003.

DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the Council common position with a view to the adoption of the regulation of the European Parliament and of the Council laying down the framework for the creation of the Single European Sky ('the framework regulation') (15851/3/2002 – C5-0138/2003 – 2001/0060(COD))

(Codecision procedure: second reading)

The European Parliament,

- having regard to the Council common position (15851/3/2002 – C5-0138/2003),
 - having regard to its position at first reading¹ on the Commission proposal to Parliament and the Council (COM(2001) 123²),
 - having regard to the amended proposal (COM(2002) 658³),
 - having regard to Article 251(2) of the EC Treaty,
 - having regard to Rule 80 of its Rules of Procedure,
 - having regard to the recommendation for second reading of the Committee on Regional Policy, Transport and Tourism (A5-0219/2003),
1. Amends the common position as follows;
 2. Instructs its President to forward its position to the Council and Commission.

¹ OJ C P5_TA-PROV(2002)0391.

² OJ C 103, 30.4.2002, p. 1.

³ Not yet published in OJ.

Amendment 1

Recital 3

(3) Smooth operation of the air transport system requires air navigation services allowing optimum use of Europe's airspace and a consistent, high level of safety in air travel, in keeping with the duty of general interest of air navigation services, including public service obligations.

(3) Air navigation is intended to protect both air-transport users and residents affected by over-flying aircraft. It should therefore be carried out to the highest standards of responsibility and competence.

Justification

It is appropriate to mention the core function of air navigation in the text of the regulation.

Amendment 2

Recital 9

(9) Air traffic services are comparable to public authorities requiring functional or structural separation and are organised according to very different legal forms in the various Member States.

(9) Air navigation services (***air traffic, communication, navigation and surveillance***) are comparable to public authorities requiring functional or structural separation and are organised according to very different legal forms in the various Member States.

Justification

Seeks to guarantee the coherence of the common position:

- 1. In order to respect the coherence of the common position on the Framework Regulation, as well as coherence with the other 3 regulations of the Single Sky package, it is important to refer to air navigation services in this recital, in line with the definition given in Article 2(4) of the common position.*
- 2. Recital 3 of the common position on the Framework Regulation recognises the general interest nature of air navigation services as a whole. It is therefore important to bring Recital 9, which might introduce an element of confusion, into line with Recital 3.*
- 3. Finally, Parliament recognised at 1st reading that air navigation services (traffic, communication, navigation and surveillance) constitute an integral whole and that their treatment as such was a precondition for maximum safety.*

Amendment 3

Recital 16 a (new)

(16a) In addition to the Single Sky Committee, an ‘Industry Consultation Body’, in which associations of airspace users, flight-safety organisations and the manufacturing industry would take part, should be established to advise the Commission on technical aspects of the implementation of the Single European Sky.

Justification

Reintroduces Am. 6 of Parliament’s first reading (P5_TA-PROV(2002)0391).

Amendment 4
Recital 17 a (new)

(17a) There should be a scale of penalties without a downgrade in safety, proper enforcement and effective sanctions against airlines and service providers which breach the provisions of this Regulation.

Justification

Reintroduces Am. 4 of Parliament’s first reading (P5_TA-PROV(2002)0391).

Amendment 5
Recital 19

(19) This Regulation does not affect the power of Member States to adopt provisions in relation to the organisation of their armed forces. ***This power may lead Member States to adopt measures to ensure that their armed forces have***

(19) This Regulation does not affect the power of Member States to adopt provisions in relation to the organisation of their armed forces. Provision should therefore be made for a safeguards clause to enable this power to be exercised.

sufficient airspace for adequate education and training purposes. Provision should therefore be made for a safeguards clause to enable this power to be exercised.

Justification

The general reference to the organisation of the armed forces is sufficient. A special reference to education and training is superfluous.

Amendment 6
Article 1, paragraph 2

2. The application of this Regulation and of the measures referred to in Article 3 shall be without prejudice to Member States' sovereignty over their airspace and to the requirements of the Member States relating to public order, public security and defence matters, as set out in Article 11. This Regulation and the abovementioned measures do not cover military operations and training.

2. This Regulation lays down the general lines of approach governing creation of the Single European Sky and identifies the fields for action by the Community and the means necessary, in terms of structures, procedures and resources, in order to create the Single European Sky, while taking into account the Member States' defence needs and Eurocontrol's task of establishing a pan-European airspace.

Justification

Reintroduces Commission's initial proposal as amended by Am. 8 of Parliament's first reading (P5_TA-PROV(2002)0391).

Amendment 7
Article 2, point 5

(5) "air navigation service providers" means any public or private entity providing air navigation services for general air traffic;

(5) "air navigation service providers" means any public or private entity, **at Member-State discretion**, providing air navigation services for general air traffic;

Justification

Reintroduces partially Am. 12 of Parliament's first reading (P5_TA-PROV(2002)0391).

Amendment 8
Article 2, point 9

(9) "air traffic flow management" means a function established with the objective of contributing to a safe, orderly and expeditious flow of air traffic by ensuring that ATC capacity is utilised **to the maximum extent possible**, and that the traffic volume is compatible with the capacities declared by the appropriate air traffic service providers;

(9) "air traffic flow management" means a function established with the objective of contributing to a safe, orderly and expeditious flow of air traffic by ensuring that ATC capacity is utilised **in a safe and efficient way**, and that the traffic volume is compatible with the capacities declared by the appropriate air traffic service providers;

Justification

Reintroduces Am. 45 of Parliament's first reading (organisation and use of airspace draft regulation - (P5_TA-PROV(2002)0393)) .

Amendment 9
Article 2, point 37

(37) "sector" means a subdivision of the totality of **control tasks** into manageable airspace portions;

(37) "sector" means a subdivision of the totality of **the airspace block** into manageable airspace portions;

Justification

Reintroduces Am. 44 of Parliament's first reading (organisation and use of airspace draft regulation) (P5_TA-PROV(2002)0393).

Amendment 10
Article 5, paragraph 1

1. The Commission shall be assisted by a committee, hereinafter referred to as “the Single Sky Committee”, composed of two representatives of each Member State and chaired by a representative of the Commission.

1. The Commission shall be assisted by a committee, hereinafter referred to as “the Single Sky Committee”, composed of two representatives of each Member State and chaired by a representative of the Commission. ***The committee shall, in particular, seek to ensure a balance of interests between civilian and military users.***

Justification

Reintroduces Am. 24 of Parliament’s first reading .(P5_TA-PROV(2002)0391)

Amendment 11

Article 5, paragraph 4 a (new)

4a. Eurocontrol shall participate in the work of the Committee with observer status.

Justification

Reintroduces Am. 27 of Parliament’s first reading (P5_TA-PROV(2002)0391).

Amendment 12
Article 5 a (new)

Article 5a

Industry Consultation Body

In addition to the Committee, an ‘Industry Consultation Body’, to which associations of airspace users, flight-safety organisations and the manufacturing industry shall belong, shall be established to advise the Commission on technical aspects of the implementation of the

Single European Sky.

Justification

Reintroduces Am. 28 of Parliament's first reading (P5_TA-PROV(2002)0391).

Amendment 13

Article 6

The Community shall endeavour, either within the framework of agreements concluded with European third countries, or within the context of Eurocontrol, to extend the scope of this Regulation, and of the measures to be adopted in accordance with Article 3, to those countries.

When drafting the measures taken to implement this Regulation, the Commission shall act consistently in support of extending the Single European Sky to neighbouring countries which are not members of the European Union, whether under bilateral agreements concluded with the non-member countries or within the framework of Eurocontrol.

Justification

Reintroduces Commission's initial proposal as amended by Am. 29 at Parliament's first reading (P5_TA PROV(2002)0391). It seeks to guarantee a proactive attitude on the part of the Commission, which is essential in relations with third countries.

Amendment 14

Article 7, paragraph 1

1. For the development of implementing rules pursuant to Article 3 which fall within the remit of Eurocontrol, the Commission shall issue mandates to Eurocontrol setting out the tasks to be performed and the timetable therefor. The Commission shall act in accordance with the procedure referred to in Article 5(2).

1. For the development of implementing rules pursuant to Article 3 which fall within the remit of Eurocontrol, the Commission shall issue mandates to Eurocontrol setting out the tasks to be performed and the timetable therefor. ***In this connection, it shall make use of the organisation's working procedures, particularly as regards the involvement and consultation of interested parties, including the military authorities.*** The Commission shall act in accordance with the procedure referred to in Article 5(2).

Justification

This amendment reinforces the use of the procedures which Parliament wanted at first reading. It guarantees that Eurocontrol will involve all the interested parties in its work: airspace users, industry, service providers and even military authorities. The military authorities are represented on a wide range of permanent working groups, but also and more particularly in the Civil-Military Interface Committee (CMIC).

Amendment 15
Article 7 a (new)

Article 7a

Sanctions

Member States shall lay down a system of sanctions for breaches of the provisions of this Regulation and shall take all the measures necessary to ensure that these sanctions are applied. The sanctions thus provided for shall be effective, proportional and dissuasive. The Member States shall take account, where appropriate, of the offender's status.

Justification

Reintroduces Am. 30 of Parliament's first reading (P5_TA-PROV(2002)0391).

Amendment 16
Article 9, paragraph 2, point (d)

d) allowing the identification and the promotion of best practice.

d) allowing the identification and the promotion of best practice, ***in particular by means of a set of safety indicators.***

Justification

Reintroduces Am. 31 of Parliament's first reading (air navigation services draft regulation - (P5_TA-PROV(2002)0392)).

Amendment 17

Article 10, paragraph 4

4. The reports shall contain an evaluation of the results achieved by the actions taken pursuant to this Regulation in the various fields of action in the light of the original objectives and with a view to future needs.

4. The reports shall contain an evaluation of the results achieved by the actions taken pursuant to this Regulation ***including appropriate information about developments in the sector, in particular concerning economic, social, employment and technological aspects, as well as about quality of service, and*** in the light of the original objectives and with a view to future needs.

Justification

Reintroduces Am. 32 of Parliament's first reading (P5_TA-PROV(2002)0391).

Amendment 18
Article 11, indent 5

- in order to conduct military operations ***and training, including the necessary possibilities for exercises.***

- in order to conduct military operations.

Justification

Training and exercises questions should be settled in the framework of the Single Sky Committee.

EXPLANATORY STATEMENT

1. Introduction

The package of Commission proposals (a framework regulation and three technical regulations) for establishing a single European sky substantially fulfils the objective of transforming the European Union's sky into an integrated airspace, subject to the same principles and rules, by 31 December 2004. This would make it possible to use our airspace more rationally (reducing the cost of air traffic control, cutting delays and increasing the efficiency of the entire system), while better safeguarding air transport safety conditions.

On the basis of the original proposal the airspace above the Community's territory would be regarded as a common resource, subdivided into air traffic control sectors, while the air traffic flow would be managed in such a way as to guarantee efficiency and flexibility.

II. Parliament's amendments at first reading

In the discussions at first reading in the committee there was widespread appreciation of the Commission proposals, particularly as they were in line with the requirements that Parliament had made in previous resolutions.

Both the rapporteur and Parliament as a whole highlighted the following priorities at the time:

- the creation of effective cooperation with Eurocontrol, so as to preclude any confusion or duplication. A basic requirement made by our committee was for the Communities to join Eurocontrol, which duly took practical form in October 2002 with the signing of the Protocol of accession of the Communities to the revised Eurocontrol Convention;
- the creation of an effective framework for cooperation between political and military authorities in the field of air navigation services. In particular, the rapporteur proposed explicit reference to this form of cooperation in the single sky committee, a proposal welcomed by the plenary;
- on the nature of air navigation services, the committee was concerned to point out that air traffic control was a service of general interest, even if such services were opened up to the private sector. This point too was approved both by the committee and the plenary;
- finally, as Parliament has called for on previous occasions, amendments were adopted calling on the Member States to make provision for penalties to be applied to those service providers and airlines that violated the single European sky's disciplinary rules.

In addition to the above, there were amendments calling for the creation of a consultative body composed of representatives of those affected by the proposal, or calling on the Commission to consult the social partners before adopting provisions to implement the single sky; they also pointed out that the application of the regulations should not prejudice the rights and duties deriving from the Chicago Convention of 1944.

III. The Council common position

Pointing out that the provisions of the framework regulation are automatically applicable to the three specific regulations, the Council has agreed to strengthen the 'horizontal' character of the framework regulation, transferring to it the provisions common to the specific regulations. In this perspective the Council decided to incorporate in the framework regulation all the definitions that were previously contained in the three specific regulations, after aligning them as far as possible with the ICAO definitions. It has also included new horizontal articles on the national supervisory authorities and the consultation of interested parties, and modified the article on the Committee procedure so as to apply it to all the single European sky regulations. The articles summarising the content of the specific regulations have been dropped, with the aim, as the Council states, of clarifying the wording of the framework regulation and avoiding repetition.

The Council could accept 31 December 2004 as the target date for implementing the harmonised framework legislation to create a single European sky. It pointed out that implementing the regulations concerned would not prejudice the sovereignty of the Member States over their own airspace, and that, in line with Parliament's amendment, the regulations would not prejudice the rights and duties of the Member States deriving from the 1944 Chicago Convention. On the military questions, the Council said that the regulations would not affect the Member States' requirements with regard to public order and national security and defence interests, as they would not cover military operations or military training. The Council has also improved the safeguard clause. The Member States made a statement on civil and military cooperation.

On relations with Eurocontrol the Council agreed to substantially improve Eurocontrol's position. To this end it has drafted provisions to involve Eurocontrol in future deliberations on implementing law.

The Council did agree to incorporate some of Parliament's amendments. However – and this also applies to the specific regulations – this did not prove possible as the wording in question was substantially changed or deleted.

IV. Comments

The basic question that this common position must answer is whether it does at least meet the priorities defined by Parliament at first reading for the creation of a single European sky. The question takes on particular importance as it will also determine the committee's future strategy and tactics. Will Parliament decide to retable some important amendments that the Council has not accepted? Will it accept the substantial changes that the Council has made to the original Commission proposal, both in their form and content? The answer to these questions will determine whether Parliament closes the procedure at second reading or opts for the conciliation procedure.

In meetings with the Commission and the Greek Presidency, the Commission said it could accept the Council joint text as a satisfactory basis for concluding the procedure, while the Presidency said that, on the sensitive aspects such as cooperation between civil and military authorities or sovereignty over their own airspace, the Member States were not prepared to accept any modifications.

On the question of modifying the proposal's structure, with the cancellation of the articles defining the scope of the technical regulations, the reporter is doubtful of the advisability of such an amendment and feels that the character of the framework regulation would be undermined. But he does agree on incorporating all the definitions, including those referring to the technical regulations, in the framework regulation.

The rapporteur would also point out that the Council has rejected the amendments on cooperation between civil and military authorities, as also the amendment to give Eurocontrol observer status on the single sky committee.

In general, the common position is characterised by a strongly conservative approach, designed to safeguard the exclusive rights of Member States in respect of their airspace, in the interest of their defence policies and obligations at international level. The result changes the nature of the original proposal for creating a single European sky.