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Proposal for a

COUNCIL DECISION

**on the position to be adopted, on behalf of the European Union,
in the EEA Joint Committee
concerning an amendment to Annex XIII
to the EEA Agreement**

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

In order to ensure the requisite legal security and homogeneity of the Internal Market, the EEA Joint Committee is to integrate all the relevant EU legislation into the EEA Agreement as soon as possible after its adoption.

2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS

The draft Decision of the EEA Joint Committee (annexed to the proposed Council Decision) aims to amend Annex XIII (Transport) to the EEA Agreement in order to incorporate with certain adaptations for the EEA EFTA states Regulation (EC) No 1070/2009 of the European Parliament and of the Council of 21 October 2009 amending Regulations (EC) No 549/2004, (EC) No 550/2004, (EC) No 551/2004 and (EC) No 552/2004 in order to improve the performance and sustainability of the European aviation system¹

The adaptations for the EEA EFTA states concern the applicability of Articles 5, 11 and 13a of Regulation (EC) No 549/2004² as amended by Regulation (EC) No 1070/2009, Articles 9a(2)(c), 9a(2)(i) and 9a(5) and (6) of Regulation (EC) No 550/2004³ as amended by Regulation (EC) No 1070/2009 and Article 6(2) of Regulation (EC) No 551/2004⁴ as amended by Regulation (EC) No 1070/2009.

According to Article 1(3) of Regulation (EC) No 549/2004, as amended by Regulation (EC) No 1070/2009, the application of the Regulation, as well as the application of the regulations referred to in Article 3, are without prejudice to the rights and duties of Member States under the 1944 Chicago Convention on International Civil Aviation ('the Chicago Convention').

By virtue of Article 12 of the Chicago Convention, the Member States undertake to keep their own regulations uniform, to the greatest possible extent, with those established under the Chicago Convention. Parts of the airspace governed by Norway and Iceland are high seas airspace within the ICAO NAT region. Consequently, Norway and Iceland have, as members of the Chicago Convention and in accordance with the established procedures, rights, obligations and responsibilities to provide air traffic services, where uniform rules apply in accordance with the requirements of annexes 2 and 11 of the Chicago Convention. Furthermore, a long standing agreement regarding the airspace serviced by Iceland enables operations that are comparable, and serve the objectives of a functional airspace block as defined by the SES regulations.

The services in the NAT region are based on ICAO requirements, the Organisation's Global Air Navigation Plan and the vision statement on the global Air Traffic Management. There is consistency to a great extent between the objectives of the ICAO Global Air Navigation Plan and the regional requirements in the NAT region on the one hand, and the objectives reflected in the SES packages I and II on the other. However, some objectives of the SES II, e.g.

(5) ¹ OJ L 300, 14.11.2009, p. 34.
(6) ² OJ L 96, 31.3.2004, p. 1.
(7) ³ OJ L 96, 31.3.2004, p. 10.
(8) ⁴ OJ L 96, 31.3.2004, p. 20.

aiming at solving congestion problems in the EUR region, might not be relevant or unnecessarily burdensome in the NAT region. To this end regional or national performance targets are more relevant to the services provided by Iceland within the NAT region.

Regulation (EC) No 549/2004

Participation in the Single Sky Committee (Article 5), adaptation (a):

The current adaptation allows, without prejudice to Article 100 EEA, the EFTA States' right to full participation in the Committee. This adaptation is retained. Due to the increased role of the EFTA Surveillance Authority after the incorporation of Regulation (EC) No 1070/2009, the adaptation text also would allow that the EFTA Surveillance Authority can be present as observer in the meetings of the Committee.

The application of Article 11 to Iceland, adaptation (b):

In order to adapt Article 11 to the special circumstances in Iceland, an adaptation has been added so that "Community-wide" shall read "regional or national".

Community wide performance targets (Article 11):

The Commission will adopt Community-wide performance targets. Those targets will only apply to the EFTA States once the Commission decisions are incorporated into the EEA Agreement.

Applicability of Article 11 to Iceland

As the current reference period ends on 31 December 2014, Article 11 shall not apply to Iceland until 1 January 2015. As there are no performance scheme requirements currently in force for Iceland this will give Iceland the time to prepare a scheme before the requirements take effect and will allow the reference period for Iceland to be in sync with the European reference period.

The designation of a Performance Review Body (Article 11(2)), adaptation (d):

In line with the two pillar structure of the EEA Agreement, the Performance Review Body ('PRB') has to be separately designated for the EFTA States. With a view to ensuring consistency, coherence and homogeneity, the same PRB designated for the EU Member States should be designated for the EFTA States as well..

Surveillance tasks (Article 11(3)(c) and (e)), adaptations (e) and (f):

For functional airspace blocks, which exclusively cover the area of either one or more EFTA States or one or more EU Member States, the EFTA Surveillance Authority or the Commission, respectively, will carry out the tasks and exercise the powers set out in the points.

The adaptation concerning letter (c) sets out the rules related to functional airspace blocks which cover the area of both one or more EFTA States and one or more EU Member States. The adaptation upholds the two pillar system by conferring the competence to carry out tasks regarding the EFTA States to the EFTA Surveillance Authority and the competence regarding the EU Member States to the Commission.

The adaptation for letter (e) is based on the same line of reasoning as the adaptation for letter (c). This adaptation, however, foresees that the assessment of the EFTA Surveillance Authority with regards to functional airspace blocks which also cover the area of one or more EU Member States shall be presented jointly to the Single Sky Committee, and not to a separate Committee in the EFTA pillar. This adaptation is motivated by the fact that the Single Sky Committee is highly specialised and that the particular EFTA issues are expected to be so interlinked with the EU issues that a separate discussion in an EFTA Committee would not be viable.

Coordination with EASA (Article 13a), adaptation (g):

The adaptation ensures that the EFTA States and the EFTA Surveillance Authority, like the EU Member States and the Commission, shall coordinate with the EASA.

Regulation (EC) No 550/2004

Functional airspace blocks (Articles 9a(2)(c) and 9a(2)(i)), adaptations (a) and (b):

The NAT region has a different regulatory obligation, as ICAO is the body proposing the set of rules governing the High Seas. The adaptation ensures this different regulatory context is taken into account. The management of traffic flow is conducted by the NAT states themselves on both sides of the Atlantic. It is therefore necessary that consistency with European or NAT Route Network is ensured by Iceland.

Dispute resolution with regard to a cross-border functional airspace block (Article 9a(5)):

The procedure set out in Article 9a(5) will not apply to the EFTA States, as sectoral adaptation III in Annex XIII sets out a separate dispute resolution procedure for disputes involving one or more EFTA States. There is therefore no need for any adaptation text.

The assessment of the functional airspace blocks (Article 9a(6)), adaptation (c):

If a functional airspace block covers only EU Member States or only EFTA States, Protocol 1 to the EEA Agreement will apply, and, respectively, the Commission and the EFTA Surveillance Authority will carry out the tasks set out in the point. The adaptation sets out the procedure in case the functional airspace block covers both one or more EU Member States and one or more EFTA States. It ensures that the two pillar structure of the EEA Agreement is adhered to as far as practically possible.

Regulation (EC) No 551/2004

Network management and design (Article 6(2)), adaptations (a), (b) and (c):

This provision deals, inter alia, with the Commission's responsibilities and tasks in relation to network management and design. Furthermore, the Commission is given the power to entrust tasks to a network manager, which was done on 7 July 2011.

The adaptation texts set out the necessary provisions in order to designate a network manager in the EFTA pillar by the EEA EFTA States. Accordingly, the Standing Committee of the EFTA States is given the tasks and functions of the Commission. Clearly, in order to facilitate that the work carried out in the two pillars are appropriately coordinated, it is important that

the same network manager is designated for the EEA EFTA States as has been designated for the EU Member States.

Adaptation (c) ensures that the Standing Committee of the EFTA States nominates the Network Manager for the EEA EFTA States. Before the Network Manager is nominated, an agreement with the relevant manager must be concluded.

3. LEGAL ELEMENTS OF THE PROPOSAL

Article 1(3) of Council Regulation (EC) No 2894/94 concerning arrangements for implementing the EEA Agreement provides that the Council establishes the position to be adopted on the Union's behalf on such Decisions, on a proposal from the Commission.

The Commission submits the Draft Decision of the EEA Joint Committee for adoption by the Council as the Union's position. The Commission would hope to be able to present it in the EEA Joint Committee at the earliest possible opportunity.

Proposal for a

COUNCIL DECISION

**on the position to be adopted, on behalf of the European Union,
in the EEA Joint Committee
concerning an amendment to Annex XIII
to the EEA Agreement**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 100(2), in conjunction with Article 218(9) thereof,

Having regard to Council Regulation (EC) No 2894/94 of 28 November 1994 concerning arrangements for implementing the Agreement on the European Economic Area⁵, and in particular Article 1(3) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The Agreement on the European Economic Area⁶ (“the EEA Agreement”) entered into force on 1 January 1994.
- (2) Pursuant to Article 98 of the EEA Agreement, the EEA Joint Committee may decide to amend, inter alia, Annex XIII thereto.
- (3) Annex XIII to the EEA Agreement contains specific provisions on all modes of transport.
- (4) Regulation (EC) No 1070/2009 of the European Parliament and of the Council of 21 October 2009 amending Regulations (EC) No 549/2004, (EC) No 550/2004, (EC) No 551/2004 and (EC) No 552/2004 in order to improve the performance and sustainability of the European aviation system⁷ is to be incorporated into the EEA Agreement with certain adaptations for the EEA EFTA states.

⁵ OJ L 305, 30.11.1994, p. 6.

⁶ OJ L 1, 3.1.1994, p. 3.

⁷ OJ L 300, 14.11.2009, p. 34.

- (5) The adaptations for the EEA EFTA states concern the applicability of Articles 5, 11 and 13a of Regulation (EC) No 549/2004⁸ as amended by Regulation (EC) No 1070/2009, Articles 9a(2)(c), 9a(2)(i) and 9a(5) and (6) of Regulation (EC) No 550/2004⁹ as amended by Regulation (EC) No 1070/2009 and Article 6(2) of Regulation (EC) No 551/2004¹⁰ as amended by Regulation (EC) No 1070/2009.
- (6) Annex XIII to the EEA Agreement should therefore be amended accordingly.
- (7) The position of the Union in the EEA Joint Committee should be based on the attached draft Decision,

HAS ADOPTED THIS DECISION:

Article 1

The position to be adopted, on behalf of the European Union, in the EEA Joint Committee on the proposed amendment to Annex XIII to the EEA Agreement shall be based on the draft Decision of the EEA Joint Committee attached to this Decision.

Article 2

This Decision shall enter into force on the day of its adoption.

Done at Brussels,

*For the Council
The President*

⁸ OJ L 96, 31.3.2004, p. 1.

⁹ OJ L 96, 31.3.2004, p. 10.

¹⁰ OJ L 96, 31.3.2004, p. 20.

Annex
DECISION OF THE EEA JOINT COMMITTEE
No
of
amending Annex XIII (Transport) to the EEA Agreement

THE EEA JOINT COMMITTEE,

Having regard to the Agreement on the European Economic Area (“the EEA Agreement”), and in particular Article 98 thereof,

Whereas:

- (1) Regulation (EC) No 1070/2009 of the European Parliament and of the Council of 21 October 2009 amending Regulations (EC) No 549/2004, (EC) No 550/2004, (EC) No 551/2004 and (EC) No 552/2004 in order to improve the performance and sustainability of the European aviation system¹¹ is to be incorporated into the EEA Agreement.
- (2) The airspace where Iceland is responsible for the provision of air traffic services is fully within the ICAO NAT region, where regional planning and regional agreements have been established, enabling FAB-like functioning, and serve the operational needs and requirements which differ from the ICAO EUR and AFI regions.
- (3) Annex XIII to the EEA Agreement should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

Annex XIII to the EEA Agreement shall be amended as follows:

1. The text of point 66t (Regulation (EC) No 549/2004 of the European Parliament and of the Council) shall be amended as follows:
 - (i) The following text is added:

‘, as amended by:

¹¹ OJ L 300, 14.11.2009, p. 34.

- **32009 R 1070**: Regulation (EC) No 1070/2009 of the European Parliament and of the Council of 21 October 2009 (OJ L 300, 14.11.2009, p. 34).’

(ii) The text of adaptation (a) is replaced by the following:

‘The following paragraphs shall be added in Article 5:

- “6. The EFTA States shall participate fully in the committee established pursuant to paragraph 1, except for the right to vote.
- 7. The EFTA Surveillance Authority shall have observer status in the Single Sky Committee.”

(iii) Adaptation (b) is renumbered as adaptation (h).

(iv) The following adaptations are inserted:

‘(b) In Article 11, the words “Community-wide” shall read “regional or national” with regard to Iceland.

(c) With regard to Iceland, Article 11 shall apply as of 1 January 2015.

(d) The first sentence of Article 11(2) shall read as follows:

“The Standing Committee of the EFTA States may designate Eurocontrol or another impartial and competent body to act as a “performance review body”. If the Commission has designated a performance review body, the Standing Committee of the EFTA States shall endeavour to designate the same entity under similar conditions to fulfil the same tasks in regard to the EFTA States.”

(e) In Article 11(3)(c) the following paragraph shall be added:

“If a functional airspace block covers the airspace of one or more EU Member States and one or more EFTA States, the tasks and powers set out in this point shall be carried out and exercised by the Commission with regard to the EU Member States and by the EFTA Surveillance Authority with regard to the EFTA States. The Commission and the EFTA Surveillance Authority shall in this regard cooperate with a view to adopting identical positions.”

(f) In Article 11(3)(e) the following paragraph shall be added:

“If the assessment concerns performance targets, which relate to one or more EU Member States and one or more EFTA States, the assessment shall be carried out by the EFTA Surveillance Authority with regard to the EFTA States and by the Commission with regard

to the EU Member States. The Commission and the EFTA Surveillance Authority shall cooperate with a view to presenting jointly the results to the Single Sky Committee.”

- (g) In Article 13a, with regards to the EFTA States, “Member States and the Commission” shall read “the EFTA States and the EFTA Surveillance Authority”.’

2. The text of point 66u (Regulation (EC) No 550/2004 of the European Parliament and of the Council) shall be amended as follows:

- (i) The following text is added:

‘, as amended by:

- **32009 R 1070**: Regulation (EC) No 1070/2009 of the European Parliament and of the Council of 21 October 2009 (OJ L 300, 14.11.2009, p. 34).’

- (ii) Adaptations (a), (b), (c) and (d) are renumbered as adaptations (d), (e), (f) and (g).

- (iii) The following adaptations are inserted:

- ‘(a) With regard to Iceland Article 9a(2)(c) shall read as follows:

“ensure consistency with the European route network established in accordance with Article 6 of the airspace Regulation or the route network established in the ICAO NAT region;”

- (b) With regard to Iceland Article 9a(2)(i) shall read as follows:

“facilitate consistency with regional or national performance targets.”

- (c) In Article 9a(6) the following paragraph shall be added:

“The Commission and the EFTA Surveillance Authority shall assess the fulfilment of the requirements set out in paragraph 2 by functional airspace blocks involving one or more EU Member States and one or more EFTA States, and shall cooperate with a view to presenting a joint result to the Single Sky Committee for discussion. If the Commission and the EFTA Surveillance Authority find that an airspace block does not fulfil the requirements they shall engage in a dialogue with the concerned EU Member States and the concerned EFTA States respectively with the aim of reaching a consensus on the measures necessary to rectify the situation.”

3. The text of point 66v (Regulation (EC) No 551/2004 of the European Parliament and of the Council) shall be amended as follows:

(i) The following text is added:

‘, as amended by:

- **32009 R 1070**: Regulation (EC) No 1070/2009 of the European Parliament and of the Council of 21 October 2009 (OJ L 300, 14.11.2009, p. 34).’

(ii) The texts of adaptations (a) and (b) are deleted.

(iii) Adaptation (c) is renumbered as adaptation (d).

(iv) The following adaptations are inserted:

‘(a) In Article 6(2), the word ”Commission” shall, with regard to the EFTA States, be replaced by the words “Standing Committee of the EFTA States”.

(b) In Article 6(2)(b) third subparagraph, the words “after consultation of the Single Sky Committee and” shall, with regard to the EFTA States, not apply.

(c) In Article 6(2)(b) third subparagraph, the following shall be added:

“If the Commission has nominated a Network Manager, the Standing Committee of the EFTA States shall endeavour to designate the same entity under similar conditions to fulfil the same tasks in regard to the EFTA States.”

4. The following is added in point 66w (Regulation (EC) No 552/2004 of the European Parliament and of the Council):

‘, as amended by:

- **32009 R 1070**: Regulation (EC) No 1070/2009 of the European Parliament and of the Council of 21 October 2009 (OJ L 300, 14.11.2009, p. 34).’

Article 2

The texts of Regulation (EC) No 1070/2009 in the Icelandic and Norwegian languages, to be published in the EEA Supplement to the *Official Journal of the European Union*, shall be authentic.

Article 3

This Decision shall enter into force on [...], provided that all the notifications under Article 103(1) of the EEA Agreement have been made*.

Article 4

This Decision shall be published in the EEA Section of, and in the EEA Supplement to, the *Official Journal of the European Union*.

Done at Brussels, .

For the EEA Joint Committee

The President

The Secretaries

to the EEA Joint Committee

* [No constitutional requirements indicated.] [Constitutional requirements indicated.]