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**COMMUNICATION FROM THE COMMISSION
TO THE EUROPEAN PARLIAMENT**

pursuant to Article 294(6) of the Treaty on the Functioning of the European Union

concerning the

**position of the Council on the adoption of a Regulation of the European Parliament and
the Council on the implementation of the Single European Sky**

(Text with EEA relevance)

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1. BACKGROUND

Date of transmission of the proposal to the European Parliament and to the Council 11 June 2013.
(document COM(2013) 0410 final – 2013/0186 COD):

Date of the opinion of the European Economic and Social Committee: 11 December 2013
(original proposal) and
2 December 2020
(amended proposal).

Date of the position of the European Parliament, first reading: 12 March 2014.

Date of transmission of the amended proposal: 22 September 2020.

Date of adoption of the position of the Council: 26 September 2024.

2. OBJECTIVE OF THE PROPOSAL FROM THE COMMISSION

The proposal aims to reform the Single European Sky legal framework in order to improve the overall efficiency of the way in which European airspace and the provision of air navigation services is regulated, organised and managed. It also aims to align this Regulation with Regulation (EU) 2018/1139 (EASA Regulation), in particular to address overlaps.

3. COMMENTS ON THE POSITION OF THE COUNCIL

The position of the Council as adopted at first reading fully reflects the political agreement reached between the European Parliament and the Council on 5 March 2024. The Commission accepts the overall agreement. The main points of this agreement are the following:

- National Supervisory Authorities (NSA) must be independent in particular in decision-making terms from air navigation service providers (ANSPs). If they are not legally distinct from such providers but only functionally separated, Member States must inform the Commission of the measures taken to meet independence

requirements. NSAs may be joined with the national competent authority provided that their decisions are taken independently. Member States must ensure that staff comply with certain independence requirements. Those provisions, although less ambitious than the Commission's proposal, nevertheless strengthen the requirements compared to the status quo.

- There is a single certificate for ANSPs, covering both the safety and economic requirements of certification. National competent authorities are in charge of issuing and overseeing the certificate. NSAs must provide to the national competent authority their assessment of the fulfilment of the economic requirements for the certification of ANSPs. Member States may decide that such assessment is attributed to the national competent authority. Subject to the conditions set out by the existing EASA Regulation, Member States may allow the provision of air navigation services by military without certification where military offers such services primarily to military traffic. Those provisions therefore maintain the existing requirements for certification, while at the same time provide for the possibility of a stronger role for the NSAs.
- Designated air traffic service providers must comply with requirements of EASA Regulation as regards certification. In addition, they must also comply with national security and defence requirements, and with requirements regarding principal place of business and ownership and control, which aligns with requirements for the procurement of other air navigation services. The designation of air traffic service providers may not be subject to conditions that would entail a restriction of the freedom to provide services or freedom of establishment which is not justified by a legitimate objective of general interest and is not proportionate to that objective. This reflects the Treaty rules and related case law. In addition, Member States must periodically assess the rights and obligations of the air traffic service providers and their compliance with obligations, which, although less ambitious than the Commission's proposal, nevertheless strengthens requirements on the oversight of ANSPs compared to the existing rules.
- ANSPs may avail themselves of the services of other ANSPs. This was not provided for in the Commission's proposal. It is however conditioned to the compliance of those other ANSPs with the requirements of EASA Regulation. Furthermore, the cooperation must be done in line with procurement requirements included in this Regulation, including with horizontal Union rules on procurement, where those are applicable.
- Member States may designate a meteorological service provider on an exclusive basis. At the same time, the Regulation foresees economic oversight over those providers as part of the performance scheme in case of designation.
- Designated air traffic service providers may decide to procure support services (communication, navigation and surveillance services, aeronautical information services, air traffic data services and meteorological services) under market conditions, or other forms of agreement where horizontal rules on procurement (Directives 2014/24/EU and 2014/25/EU) do not apply. Horizontal rules on procurement thus continue to prevail. As regards procurement of terminal air traffic services for both aerodrome and approach control, Member States may allow procurement under market conditions. In that case, the tender specifications must include requirements on service quality, in line with the objectives of the Commission's proposal. Member States must take appropriate measures to avoid

cross-subsidisation between procured services and other services, which is in line with the Commission's objectives to avoid distortion of competition. A derogation to the requirements for ANSPs on the place of business and ownership and control is provided for certain providers of global satellite services, in order to account for the state of service provision in the Union at the time of adoption of the Regulation. In line with the objectives of the Commission's proposal, air traffic service providers designated as a result of a procurement procedure are not subject to certain provisions of the performance and charging schemes, in particular they are not required to submit a performance plan with performance targets.

- Providers of Common Information Services (CIS) must comply with national security and defence requirements, and with requirements regarding their principal place of business and ownership and control, which are aligned to the requirements applicable to ANSPs. Where CIS are provided by a single provider, the price of those services must be based on costs and may include a mark-up. Where CIS are not provided by a single provider, the individual CIS must be provided for free. This addresses the Commission's proposal objective of regulating the monopoly service.
- Member States may maintain the cooperation within the airspace of already established Functional Airspace Blocks, provided that it does not affect the efficient implementation of the Regulation and that the related costs are reported separately.
- The Regulation establishes an independent and impartial advisory Performance Review Board (PRB) to assist the Commission in its tasks related to the performance and charging schemes. The Regulation establishes also a National Supervisory Authorities Cooperation Board (NCB). The Commission must provide the secretariat of the PRB and of the NCB. The costs related to the PRB, the NCB and the secretariat are to be financed from the budget of the Union. This is a major departure from the Commission's proposal which proposed a set up for a regulatory PRB within the European Union Aviation Safety Agency and a different role of the Commission in the implementation/enforcement of the performance and charging schemes. Nevertheless, it should bring some improvements in the enforcement of the performance scheme and provide for a needed stability in the regulation of air navigation services.
- As a consequence of such set up for the PRB and NCB, the relevant amendments to the EASA Regulation were removed. EASA Regulation is now amended to provide for some limited corrections of cross-references to the SES Regulation, alignment of definitions between the two Regulations, and to the update of rules on the certification of ANSPs.
- As regards the performance and charging schemes, the Regulation maintains the various roles and responsibilities of Member States, NSAs, the Commission and the PRB, and the main elements of the existing legal framework, including those in the implementing rules. The agreement brings some added-value to the existing legislation, and it clarifies the existing legal framework. In particular, the assessment process is streamlined compared to the existing legislation. Subject to the adoption by the Commission of adequate indicators, the national performance plans would also include binding performance targets for terminal services in the key performance area of climate and environment. The Commission must conduct a feasibility study on modulation of *en route* air navigation charges to support improvements in climate and environmental performance by airspace users. On the

basis of this study, the Commission will determine whether to adopt an implementing act for a uniform application of such modulation.

- The Regulation lists nine network functions: design and utilisation of airspace structures; air traffic flow management; coordination of scarce resources; facilitation of delegation of service provision; delivery of air traffic control capacity; management of network crises; air traffic flow management delay attribution; management of planning, monitoring and coordination of implementation activities of the deployment of infrastructure in the European ATM network; monitoring of the functioning of the European ATM network infrastructure. The list of network functions is exhaustive and covers all aspects needed in relation to the network management. The Regulation clarifies that such network functions are to be executed by Member States and all relevant stakeholders with the contribution of the Network Manager. It lists the tasks of the Network Manager and sets its main working methods, including the cooperative decision-making process. It establishes the Network Management Board for the governance of the execution of the network functions. Those provisions clarify the various roles and responsibilities, and an appropriate empowerment is provided for the Commission to adopt detailed implementing rules.
- The Regulation includes requirements and conditions for sharing and making available operational data for civil traffic. The Commission is empowered to provide further details in implementing rules. The empowerment covers the adoption of general principles and common rules for setting prices, and requirements for identification of prospective market entrants, referred to as entities having a proven interest in considering the provision of air navigation services, who also need access to such data.
- The Commission must adopt rules related to the uniform implementation of the ICAO airspace classification. This corresponds to an already existing empowerment for the Commission.
- Member States may temporarily suspend the application of the Flexible Use of Airspace under certain conditions. The condition for suspension are better defined compared to the existing rules.
- The Commission may set up common projects based on the needs for synchronisation amongst stakeholders for implementing essential operational changes identified in the European ATM Master Plan, having a network-wide impact and having reached sufficient maturity for implementation. Those additional conditions are in line with the Commission's proposal objectives.
- As regards the committee procedure, where an examination procedure applies and the committee delivers no opinion, the Commission cannot adopt the implementing act. This reflects the current legislation.
- Several provisions have a delayed date of application. In the meantime, the corresponding legal provisions currently in force continue to apply. Such delayed start remains reasonable in relation to the modifications being introduced.

4. CONCLUSION

The Commission accepts the results of the inter-institutional negotiations and can therefore accept the Council's position at first reading.

DECLARATIONS FROM THE COMMISSION

The Commission has made two unilateral declarations, which can be found in the appendix.

APPENDIX

Declarations from the Commission

I - Unilateral statement regarding the institutional autonomy of the Commission in relation to the Secretariat supporting the Performance Review Board

‘The Commission will provide the Secretariat of the PRB, taking into account the needs indicated by the PRB so that the PRB can effectively perform its functions as laid down by the Regulation. The Commission will ensure that the Secretariat has sufficient resources to carry out these tasks. The Commission fully recognises the need for the PRB to work independently. The requirement that the Secretariat provides its support to the PRB without taking any directives except from the PRB to enable it to fulfil its role for the purposes of preparing the content and orientation of the opinions, recommendation, reports, and guidance material of the PRB, must be understood as a corollary of this framework of independence. The set-up of the Secretariat cannot therefore encroach upon the principles of organisational autonomy and of independence of the Commission.’

II - Unilateral statement on the financing of human resources for the Single European Sky and location of the Secretariat for Performance Review

‘The Commission recalls that the final agreement reached by the co-legislators on the Amended proposal for a Regulation on the implementation of the Single European Sky has significantly modified the attribution of tasks of the Performance Review Body and of the Commission, as well as the governance for the Performance Review Body. The Commission’s tasks are more extensive compared to the Commission’s initial proposal as the Commission (and not the PRB set out in an Agency) would be in charge of all decisions and would rely on the advice of the Performance Review Board. Furthermore, the Commission would have to provide a Secretariat to the Performance Review Board and to the NSA Cooperation Board. As a consequence, the Commission requires a significant amount of staff and resources.

The human resources required by the final agreement endorsed by the co-legislators will not allow the Commission to respect the principle of stable staffing and will require additional resources, to be authorised by the European Parliament and the Council during the annual budgetary procedure along with the related budgetary appropriations.

Without any additional means, the options to finance the necessary administrative costs for staff of the Secretariat for Performance Review cannot be found. Heading 7 European Public Administration of the multiannual financial framework 2021-2027 was built on the principle of stable staffing, and there is no margin to finance additional officials and external staff. The Commission will internally redeploy the officials required for this initiative. However, for the additional staff needed, the new budget line would have to be created under the Connecting Europe Facility to finance them beyond the limit of the principle of stable staffing.

The Commission will seek to establish agreements with Eurocontrol and EASA for a programme of regular secondments of staff to the Secretariat. Finally, the Commission will seek to establish appropriate arrangements with Eurocontrol for the provision of relevant information.'